CODE OF VIRGINIA

Title 2.2

Administration of Government

Title 2.2 - ADMINISTRATION OF GOVERNMENT

Subtitle I - ORGANIZATION OF STATE GOVERNMENT

Part A - OFFICE OF THE GOVERNOR

Chapter 1 - GOVERNOR

Article 1 - GENERAL PROVISIONS

§ 2.2-100. Salaries of Governor and other officers; administrative assistants

A. The Governor and all officers of the Commonwealth shall receive annually for their services such salaries as are fixed by law.

B. The Governor may employ the necessary administrative assistants, including a chief of staff, and fix their salaries within the limitation of funds appropriated for executive control of the Commonwealth. Any chief of staff appointed by the Governor shall be confirmed by a majority of the members in each house of the General Assembly.

C. The Governor may employ the staff required to perform necessary services in the operation of the Executive Mansion.

Code 1950, §§ 2-34, 14-9 to 14-16, 14-18 to 14-26; 1962, c. 356; 1964, c. 386, § 14.1-12; 1966, cc. 55, 677, § 2.1-38; 1968, cc. 223, 562; 1970, cc. 262, 759; 1977, c. 672; 1984, cc. 104, 750, 779; 1998, c. 872; 2001, c. 844.

§ 2.2-101. Clerical forces and office expenses of Governor

The Governor may appoint the clerical force necessary to the efficient operation of his office, but the aggregate amount paid such clerks shall not exceed the sum provided by law. The Governor may expend for the contingent expenses of his office such sums as are provided by law.

Code 1950, §§ 14-11, 14-25; 1964, c. 386, § 14.1-13; 1970, c. 260; 1998, c. 872, § 2.1-38.3; 2001, c. 844.

§ 2.2-102. Personal staff as commander in chief

The personal staff of the Governor and commander in chief shall consist of the Adjutant General of the Commonwealth and any additional aides detailed by the Governor from the commissioned personnel of the National Guard of Virginia, the officers reserve corps or the naval reserve corps, or officers of the army or navy of the United States, retired or former officers of the army or navy of the United States, which detail shall operate for the time being as a commission to each officer so detailed as aide-de-camp. Commissions as military aides to the Governor shall be issued by the Secretary of the Commonwealth with the rank the Governor deems appropriate and shall continue in effect at the pleasure of the Governor during his term in office. The commissions shall be

honorary in nature and shall not constitute a commission in the militia of the Commonwealth or entitle the recipient to any pay or benefits. The insignia to be worn by aides when performing their duties shall be prescribed by the Governor. No officer so detailed shall be compelled to serve. Officers so detailed shall not be relieved from their ordinary duties, except when actually on duty with the Governor. No officer shall be detailed under this section unless he is a qualified voter of the Commonwealth. In addition, the Governor may appoint and commission with the rank of colonel as a personal aide, the Clerk of the House of Delegates.

Code 1950, § 2-36; 1958, c. 119; 1966, c. 677, § 2.1-40; 1984, c. 17; 2001, c. 844.

§ 2.2-103. Authority to formulate executive branch policies; chief officer for personnel administration and planning and budget

A. Except as otherwise provided by the Constitution or law, the Governor shall have the authority and responsibility for the formulation and administration of the policies of the executive branch, including resolution of policy and administrative conflicts between and among agencies.

B. The Governor shall be the Chief Personnel Officer of the Commonwealth. He shall direct the execution of Chapter 29 (§ 2.2-2900 et seq.). The Governor may employ personnel assistants and employees necessary to carry out Chapter 29 (§ 2.2-2900 et seq.). The Governor shall have the following powers and duties relating to state personnel administration:

1. Establish and maintain a classification plan for the service of the Commonwealth, and from time to time, make such amendments as may be necessary. The classification plan shall provide for the grouping of all positions in classes based upon the respective duties, authority, and responsibilities. Each position in the service of the Commonwealth shall be allocated to the appropriate class title.

2. Establish and administer a compensation plan for all employees, and from time to time make such amendments as may be necessary. The compensation plan shall be uniform; and for each class of positions there shall be set forth a minimum and a maximum rate of compensation and any necessary or equitable intermediate rates.

3. Adopt necessary rules, not in conflict with Chapter 29 (§ 2.2-2900 et seq.), to provide for the administration of the duties imposed by Chapter 29 (§ 2.2-2900 et seq.), and to govern minimum hours of work, attendance regulations, leaves of absences for employees and the order and manner in which layoffs shall be made.

C. The Governor shall be the chief planning and budget officer of the Commonwealth.

Code 1950, §§ 2-46, 2-81; 1966, cc. 55, 677, §§ 2.1-52, 2.1-113; 1975, c. 390; 1976, cc. 725, 760, 761 §§ 2.1-41.1, 2.1-114.2, 2.1-387; 1978, c. 846; 1984, c. 720; 2001, c. 844.

§ 2.2-104. Delegation of powers

The Governor may designate and empower any secretary or other officer in the executive branch of state government who is required to be confirmed by the General Assembly or either house

thereof, to perform without approval, ratification, or other action by the Governor any function that is vested in the Governor by law, or which such officer is required or authorized by law to perform only with or subject to the approval, ratification of the Governor; however nothing contained in this section shall relieve the Governor of his responsibility in office for the acts of any secretary or officer designated by him to perform such functions. Any designation or authorization under this section shall be (i) in the form of a written executive order, (ii) subject to the terms, conditions, and limitations the Governor deems advisable, and (iii) revocable in whole or in part at any time by the Governor.

1976, c. 731, § 2.1-39.1; 2001, c. 844.

§ 2.2-105. Appointments to office; effect of refusal to confirm by the General Assembly

No person appointed to any office by the Governor, whose appointment is subject to confirmation by the General Assembly, shall enter upon, or continue in, office after the General Assembly has refused to confirm his appointment. Nor shall such person be eligible for reappointment during the recess of the General Assembly to fill the vacancy caused by the refusal to confirm.

Code 1950, § 2-35; 1966, c. 677, § 2.1-39; 2001, c. 844.

§ 2.2-106. Appointment of agency heads; disclosure of resumes; severance

A. Notwithstanding any provision of law to the contrary, the Governor shall appoint the administrative head of each agency of the executive branch of state government except the:

1. Executive Director of the Virginia Port Authority;

2. Director of the State Council of Higher Education for Virginia;

3. Executive Director of the Department of Game and Inland Fisheries;

4. Executive Director of the Jamestown-Yorktown Foundation;

5. Executive Director of the Motor Vehicle Dealer Board;

6. Librarian of Virginia;

7. Administrator of the Commonwealth's Attorneys' Services Council;

8. Executive Director of the Virginia Housing Development Authority; and

9. Executive Director of the Board of Accountancy.

However, the manner of selection of those heads of agencies chosen as set forth in the Constitution of Virginia shall continue without change. Each administrative head and Secretary appointed by the Governor pursuant to this section shall (i) be subject to confirmation by the General Assembly, (ii) have the professional qualifications prescribed by law, and (iii) serve at the pleasure of the Governor.

B. As part of the confirmation process for each administrative head and Secretary, the Secretary of the Commonwealth shall provide copies of the resumes and statements of economic interests filed

pursuant to § 2.2-3117 to the chairs of the House of Delegates and Senate Committees on Privileges and Elections. For appointments made before January 1, copies shall be provided to the chairs within 30 days of the appointment or by January 7 whichever time is earlier; and for appointments made after January 1 through the regular session of that year, copies shall be provided to the chairs within seven days of the appointment. Each appointee shall be available for interviews by the Committees on Privileges and Elections or other applicable standing committee. For the purposes of this section and § 2.2-107, there shall be a joint subcommittee of the House of Delegates and Senate Committees on Privileges and Elections consisting of five members of the House Committee and three members of the Senate Committee appointed by the respective chairs of the committees to review the resumes and statements of economic interests of gubernatorial appointees. The members of the House of Delegates shall be appointed in accordance with the principles of proportional representation contained in the Rules of the House of Delegates. No appointment confirmed by the General Assembly shall be subject to challenge by reason of a failure to comply with the provisions of this subsection pertaining to the confirmation process.

C. (Effective until October 1, 2016) For the purpose of this section, "agency" includes all administrative units established by law or by executive order that are not (i) arms of the legislative or judicial branches of government; (ii) institutions of higher education as classified under §§ 23-253.7, 22.1-346, 23-14, and 23-252; (iii) regional planning districts, regional transportation authorities or districts, or regional sanitation districts; and (iv) assigned by law to other departments or agencies, not including assignments to secretaries under Article 7 (§ 2.2-215 et seq.) of Chapter 2 of this title.

C. (Effective October 1, 2016) For the purpose of this section, "agency" includes all administrative units established by law or by executive order that are not (i) arms of the legislative or judicial branches of government; (ii) institutions of higher education as classified under §§ 22.1-346, 23.1-1100, 23.1-3210, and 23.1-3216; (iii) regional planning districts, regional transportation authorities or districts, or regional sanitation districts; and (iv) assigned by law to other departments or agencies, not including assignments to secretaries under Article 7 (§ 2.2-215 et seq.) of Chapter 2 of this title.

D. The resumes and applications for appointment submitted by persons who are appointed by the Governor pursuant to this section shall be available to the public upon request.

E. Severance benefits provided to any departing agency head, whether or not appointed by the Governor, shall be publicly announced by the appointing authority prior to such departure.

1977, c. 542, § 2.1-41.2; 1979, c. 294; 1981, c. 589; 1983, c. 298; 1984, c. 104; 1986, c. 565; 1994, c. 661; 1995, cc. 767, 816; 1996, c. 812; 1998, c. 427; 2000, cc. 382, 400; 2001, cc. 832, 844; 2003, cc. 981, 1021; 2005, cc. 803, 938; 2006, c. 254; 2010, cc. 136, 145; 2016, c. 729.

§ 2.2-107. Appointment of members of commissions, boards, and other collegial bodies; disclosure of resumes

A. Except as provided in the Constitution of Virginia, or where the manner of selection of members of boards and commissions is by election by the General Assembly, or as provided in Title 3.2 or § 54.1-901, but notwithstanding any other provision of law to the contrary, the Governor shall appoint all members of boards, commissions, councils or other collegial bodies created by the General Assembly in the executive branch of state government to terms of office as prescribed by law. Each member appointed pursuant to this section shall be subject to confirmation by the General Assembly and shall have the professional qualifications prescribed by law.

As part of the confirmation process for each gubernatorial appointee, the Secretary of the Commonwealth shall provide copies of the resume and statement of economic interests filed pursuant to § 2.2-3117 or 2.2-3118, as appropriate, to the chairs of the House of Delegates and Senate Committees on Privileges and Elections. For the purposes of this section and § 2.2-106, there shall be a joint subcommittee of the House of Delegates and Senate Committees on Privileges and Elections consisting of five members of the House Committee and three members of the Senate Committee appointed by the respective chairs of the committees to review the resumes and statements of economic interests of gubernatorial appointees. The members of the House of Delegates shall be appointed in accordance with the principles of proportional representation contained in the Rules of the House of Delegates. No appointment confirmed by the General Assembly shall be subject to challenge by reason of a failure to comply with the provisions of this paragraph pertaining to the confirmation process.

B. The resumes and applications for appointment submitted by persons who are appointed by the Governor pursuant to this section shall be available to the public upon request.

1977, c. 447, § 2.1-42.1; 1978, c. 834; 2001, c. 844; 2005, cc. 803, 938; 2016, c. 729.

§ 2.2-108. (Effective until October 1, 2016) Removal of members of certain boards, commissions, etc

A. Notwithstanding any provision of law to the contrary, the Governor may remove from office for malfeasance, misfeasance, incompetence, or gross neglect of duty any member of the board of any public institution of higher education or other educational institution in Virginia, and fill the vacancy resulting from the removal. Each appointment to fill a vacancy shall be subject to confirmation by the General Assembly.

B. Notwithstanding any provision of law to the contrary, the Governor may remove from office for malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor any member of any board, commission, council or other collegial body established by the General Assembly in the executive branch of state government except those boards provided for in subsection A, and fill the vacancy resulting from the removal subject to confirmation by the General Assembly.

C. The Governor shall set forth in a written public statement his reasons for removing any member pursuant to this section at the time the removal occurs. The Governor shall be the sole judge of the sufficiency of the cause for removal as set forth in this section.

Code 1950, § 2-39; 1966, c. 677, § 2.1-43; 1977, c. 446; 1988, c. 765; 2001, c. 844.

§ 2.2-108. (Effective October 1, 2016) Removal of members of certain boards, commissions, etc

A. Notwithstanding any provision of law to the contrary, the Governor may remove from office for malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly, or refusal to carry out a lawful directive of the Governor any member of any board, commission, council or other collegial body established by the General Assembly in the executive branch of state government except those boards provided for in subsection C of § 23.1-1300, subsection A of § 23.1-3100, and subsection A of § 23.1-3200 and fill the vacancy resulting from the removal subject to confirmation by the General Assembly.

B. The Governor shall set forth in a written public statement his reasons for removing any member pursuant to this section at the time the removal occurs. The Governor is the sole judge of the sufficiency of the cause for removal as set forth in this section.

Code 1950, § 2-39; 1966, c. 677, § 2.1-43; 1977, c. 446; 1988, c. 765; 2001, c. 844; 2016, c. 588.

§ 2.2-109. Requiring appearances by officers, etc., and production of records, etc.; issuance of subpoenas and other writs; employment of accountants

Whenever the Governor deems it necessary and proper, he may require any state officer, superintendent, board, or employee to appear before him, and he may also require the production of any official books, accounts, vouchers, and other papers relating to their offices and duties. The Governor may issue subpoenas or other writs for the purpose of enforcing the provisions of this section. The Governor may employ accountants to properly inspect such records, vouchers, or other papers.

Code 1950, § 2-40; 1956, c. 424; 1966, c. 677, § 2.1-44; 2001, c. 844.

§ 2.2-109.01. Signed statements required from appointees

For purposes of this section:

"Appointed position" means a position appointed by the Governor or other appointing authority in accordance with law.

"Covered appointee" means any person serving in an appointed position who is eligible for severance benefits under the Workforce Transition Act of 1995 (§ 2.2-3200 et seq.), including but not limited to, any (i) officer, (ii) agency head, or (iii) member of a board, commission, council, or other collegial body.

Upon initial appointment or reappointment, the Governor or other appointing authority, or their designee, shall obtain a signed statement from each covered appointee providing that such person has read and understands the severance benefits for which he is eligible under the Workforce Transition Act of 1995. The Governor or other appointing authority, or their designee shall provide all such statements to the Secretary of the Commonwealth. The Secretary shall provide for such statements to be retained in the records of the Commonwealth.

2006, cc. 813, 902.

§ 2.2-110. Officers of Commonwealth and its institutions to make reports to Governor

The officers of the executive branch of state government and superintendents and boards of state institutions shall make to the Governor reports at the times prescribed by law or at any time the Governor may require on any subject relating to their offices and institutions. The reports shall be in a written or electronic format and contain such information as the Governor may require. The reports shall be filed in the office of the Secretary of the Commonwealth, and under his supervision, summarized and recorded in books kept for the purpose.

Code 1950, § 2-38; 1966, c. 677, § 2.1-42; 2001, c. 844; 2012, c. 434.

§ 2.2-111. Suits, actions, etc., by Governor

A. In order to protect or preserve the interests or legal rights of the Commonwealth and its citizens, the Governor may, by and with the advice of the Attorney General, institute any action, suit, motion or other proceeding, in the name of the Commonwealth, in the Supreme Court of the United States or any other court or tribunal in which such action, suit, motion or other proceeding may be properly commenced and prosecuted.

B. In accordance with subsection A and pursuant to his duty to protect or preserve the general welfare of the citizens of the Commonwealth, the Governor may institute any action, suit, motion or other proceeding on behalf of its citizens, in the name of the Commonwealth acting in its capacity as parens patriae, where he has determined that existing legal procedures fail to adequately protect existing legal rights and interests of such citizens.

Code 1950, § 2-43; 1966, c. 677, § 2.1-49; 1975, c. 241; 2001, c. 844.

§ 2.2-112. To whom return on warrant of Governor to be made

Any officer to whom any order or warrant of the Governor is directed shall make return to the Secretary of the Commonwealth, who shall preserve it in his office.

Code 1950, § 2-44; 1966, c. 677, § 2.1-50; 2001, c. 844.

§ 2.2-113. Temporary suspension of state mandates

A. The Governor may suspend, temporarily and for a period not to exceed one year, any mandate, or portion thereof, prescribed by any unit of the executive branch of state government on a county, city, town, or other unit of local government upon a finding that it faces fiscal stress and the suspension of the mandate or portion thereof would help alleviate the fiscal hardship.

However, for a period beginning July 1, 2010, and ending July 1, 2012, the Governor may suspend any such mandate for a period not to exceed two years upon proper application by a locality pursuant to this section.

B. No application shall be made by the locality until approved by resolution of the governing body.

C. At the time of application, the following information shall be published in the Virginia Register: (i) the name of the petitioning locality, (ii) the mandate or portion thereof requested to be suspended, (iii) the impact of the suspension of the mandate on the ability of the local government to deliver services, (iv) the estimated reduction in current budget from the suspension, and (v) the time period requested for suspension. Publication in the Virginia Register shall occur at least 20 days in advance of any suspension by the Governor.

D. No later than January 1 of each year, the Governor shall submit to the General Assembly a report that identifies each petitioning locality, the mandate or portion thereof for which suspension was sought, and the response provided to the locality.

E. Nothing in this section shall apply to the Department of Education.

In making a determination of fiscal stress, the Governor may consider, but is not limited to, the following factors: any changes in anticipated revenue, income distribution of residents, revenue effort, revenue capacity, and changes in local population and employment levels.

1991, c. 638, § 2.1-51.5:1; 1993, c. 230; 1994, c. 158; 2001, c. 844; 2003, c. 169; 2010, c. 79.

§ 2.2-114. Coordination of official communications with federal and foreign governments

The Governor may adopt regulations for coordination of official communications on behalf of the Commonwealth by any officer, agency or employee of the Commonwealth with the government of the United States, another state or foreign nation. Subject to the ultimate authority of the General Assembly to prescribe the policies of the Commonwealth and within the framework of policy established by the General Assembly, all communications shall be at the policy direction of the Governor; however, communications by the General Assembly or the Supreme Court of Virginia with the legislature or the judiciary, respectively, of the United States, another state or foreign nation, shall be at the discretion of the General Assembly and the Supreme Court of Virginia. Actions taken under § 2.2-611 shall be subject to the provisions of this section.

1976, c. 704, § 2.1-38.2; 2001, c. 844.

§ 2.2-115. Commonwealth's Development Opportunity Fund

A. As used in this section, unless the context requires otherwise:

"New job" means employment of an indefinite duration, created as the direct result of the private investment, for which the firm pays the wages and standard fringe benefits for its employee, requiring a minimum of either (i) 35 hours of the employee's time a week for the entire normal year of the firm's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year.

Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth to the location of the economic development project, positions with suppliers, and multiplier or spin-off jobs shall not qualify as new jobs. The term "new job" shall include positions with contractors provided that all requirements included within the definition of the term are met.

"Prevailing average wage" means that amount determined by the Virginia Employment Commission to be the average wage paid workers in the city or county of the Commonwealth where the economic development project is located. The prevailing average wage shall be determined without regard to any fringe benefits.

"Private investment" means the private investment required under this section.

B. There is created the Commonwealth's Development Opportunity Fund (the Fund) to be used by the Governor to attract economic development prospects and secure the expansion of existing industry in the Commonwealth. The Fund shall consist of any funds appropriated to it by the general appropriation act and revenue from any other source, public or private. The Fund shall be established on the books of the Comptroller, and any funds remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund. The Governor shall report to the Chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance as funds are awarded in accordance with this section.

C. Funds shall be awarded from the Fund by the Governor as grants or loans to political subdivisions. The criteria for making such grants or loans shall include (i) job creation, (ii) private capital investment, and (iii) anticipated additional state tax revenue expected to accrue to the state and affected localities as a result of the capital investment and jobs created. Loans shall be approved by the Governor and made in accordance with guidelines established by the Virginia Economic Development Partnership and approved by the Comptroller. Loans shall be interest-free unless otherwise determined by the Governor and shall be repaid to the Fund. The Governor may establish the interest rate to be charged; otherwise, any interest charged shall be at market rates as determined by the State Treasurer and shall be indicative of the duration of the loan. The Virginia Economic Development Partnership shall be responsible for monitoring repayment of such loans and reporting the receivables to the Comptroller as required.

Beginning with the five fiscal years from fiscal year 2006-2007 through fiscal year 2010-2011, and for every five fiscal years' period thereafter, in general, no less than one-third of the moneys appropriated to the Fund in every such five-year period shall be awarded to counties and cities having an annual average unemployment rate that is greater than the final statewide average unemployment rate for the calendar year that immediately precedes the calendar year of the award. However, if such one-third requirement will not be met because economic development prospects in such counties and cities are unable to fulfill the applicable minimum private investment and

new jobs requirements set forth in this section, then any funds remaining in the Fund at the end of the five-year period that would have otherwise been awarded to such counties and cities shall be made available for awards in the next five fiscal years' period.

D. Funds may be used for public and private utility extension or capacity development on and off site; public and private installation, extension, or capacity development of high-speed or broadband Internet access, whether on or off site; road, rail, or other transportation access costs beyond the funding capability of existing programs; site acquisition; grading, drainage, paving, and any other activity required to prepare a site for construction; construction or build-out of publicly or privately owned buildings; training; or grants or loans to an industrial development authority, housing and redevelopment authority, or other political subdivision for purposes directly relating to any of the foregoing. However, in no case shall funds from the Fund be used, directly or indirectly, to pay or guarantee the payment for any rental, lease, license, or other contractual right to the use of any property.

It shall be the policy of the Commonwealth that moneys in the Fund shall not be used for any economic development project in which a business relocates or expands its operations in one or more Virginia localities and simultaneously closes its operations or substantially reduces the number of its employees in another Virginia locality. The Secretary of Commerce and Trade shall enforce this policy and for any exception thereto shall promptly provide written notice to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any exception to such policy.

E. 1. a. Except as provided in this subdivision, no grant or loan shall be awarded from the Fund unless the project involves a minimum private investment of $5 million and creates at least 50 new jobs for which the average wage, excluding fringe benefits, is no less than the prevailing average wage. For projects, including but not limited to projects involving emerging technologies, for which the average wage of the new jobs created, excluding fringe benefits, is at least twice the prevailing average wage for that locality or region, the Governor shall have the discretion to require no less than one-half the number of new jobs as set forth for that locality in this subdivision.

b. Notwithstanding the provisions of subdivision a, a grant or loan may be awarded from the Fund if the project involves a minimum private investment of $100 million and creates at least 25 new jobs for which the average wage, excluding fringe benefits, is no less than the prevailing average wage.

2. Notwithstanding the provisions of subdivision 1 a, in localities (i) with an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year or (ii) with a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year, a grant or loan may be awarded from the Fund pursuant to subdivision 1 a if the project involves a minimum private investment of $2.5 million and creates at

least 25 new jobs for which the average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average wage.

3. Notwithstanding the provisions of subdivisions 1 a and 2, in localities (i) with an annual unemployment rate for the most recent calendar year for which such data is available that is greater than the final statewide average unemployment rate for that calendar year and (ii) with a poverty rate for the most recent calendar year for which such data is available that exceeds the statewide average poverty rate for that year, a grant or loan may be awarded from the Fund pursuant to such subdivisions if the project involves a minimum private investment of $1.5 million and creates at least 15 new jobs for which the average wage, excluding fringe benefits, is no less than 85 percent of the prevailing average wage.

4. For projects that are eligible under subdivision 2 or 3, the average wage of the new jobs, excluding fringe benefits, shall be no less than 85 percent of the prevailing average wage. In addition, for projects in such localities, the Governor may award a grant or loan for a project paying less than 85 percent of the prevailing average wage but still providing customary employee benefits, only after the Secretary of Commerce and Trade has made a written finding that the economic circumstances in the area are sufficiently distressed (i.e., high unemployment or underemployment and negative economic forecasts) that assistance to the locality to attract the project is nonetheless justified. However, the minimum private investment and number of new jobs required to be created as set forth in this subsection shall still be a condition of eligibility for an award from the Fund. Such written finding shall promptly be provided to the chairs of the Senate Committee on Finance and the House Committee on Appropriations.

F. 1. The Virginia Economic Development Partnership shall assist the Governor in developing objective guidelines and criteria that shall be used in awarding grants or making loans from the Fund. The guidelines may require that as a condition of receiving any grant or loan incentive that is based on employment goals, a recipient company must provide copies of employer quarterly payroll reports that have been provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal. The guidelines may include a requirement for the affected locality or localities to provide matching funds which may be cash or in-kind, at the discretion of the Governor. The guidelines and criteria shall include provisions for geographic diversity and a cap on the amount of funds to be provided to any individual project. At the discretion of the Governor, this cap may be waived for qualifying projects of regional or statewide interest. In developing the guidelines and criteria, the Virginia Economic Development Partnership shall use the measure for Fiscal Stress published by the Commission on Local Government of the Department of Housing and Community Development for the locality in which the project is located or will be located as one method of determining the amount of assistance a locality shall receive from the Fund.

2. a. Notwithstanding any provision in this section or in the guidelines, each political subdivision that receives a grant or loan from the Fund shall enter into a contract with each business

beneficiary of funds from the Fund. A person or entity shall be a business beneficiary of funds from the Fund if grant or loan moneys awarded from the Fund by the Governor are paid to a political subdivision and (i) subsequently distributed by the political subdivision to the person or entity or (ii) used by the political subdivision for the benefit of the person or entity but never distributed to the person or entity.

b. The contract between the political subdivision and the business beneficiary shall provide in detail (i) the fair market value of all funds that the Commonwealth has committed to provide, (ii) the fair market value of all matching funds (or in-kind match) that the political subdivision has agreed to provide, (iii) how funds committed by the Commonwealth (including but not limited to funds from the Fund committed by the Governor) and funds that the political subdivision has agreed to provide are to be spent, (iv) the minimum private investment to be made and the number of new jobs to be created agreed to by the business beneficiary, (v) the average wage (excluding fringe benefits) agreed to be paid in the new jobs, (vi) the prevailing average wage, and (vii) the formula, means, or processes agreed to be used for measuring compliance with the minimum private investment and new jobs requirements, including consideration of any layoffs instituted by the business beneficiary over the course of the period covered by the contract.

The contract shall state the date by which the agreed upon private investment and new job requirements shall be met by the business beneficiary of funds from the Fund and may provide for the political subdivision to grant up to a 15-month extension of such date if deemed appropriate by the political subdivision subsequent to the execution of the contract. Any extension of such date granted by the political subdivision shall be in writing and promptly delivered to the business beneficiary, and the political subdivision shall simultaneously provide a copy of the extension to the Virginia Economic Development Partnership.

The contract shall provide that if the private investment and new job contractual requirements are not met by the expiration of the date stipulated in the contract, including any extension granted by the political subdivision, the business beneficiary shall be liable to the political subdivision for repayment of a portion of the funds provided under the contract. The contract shall include a formula for purposes of determining the portion of such funds to be repaid. The formula shall, in part, be based upon the fair market value of all funds that have been provided by the Commonwealth and the political subdivision and the extent to which the business beneficiary has met the private investment and new job contractual requirements. Any such funds repaid to the political subdivision that relate to the award from the Commonwealth's Development Opportunity Fund shall promptly be paid over by the political subdivision to the Commonwealth by payment remitted to the State Treasurer. Upon receipt by the State Treasurer of such payment, the Comptroller shall deposit such repaid funds into the Commonwealth's Development Opportunity Fund.

c. The contract shall be amended to reflect changes in the funds committed by the Commonwealth or agreed to be provided by the political subdivision.

d. Notwithstanding any provision in this section or in the guidelines, whenever layoffs instituted by a business beneficiary over the course of the period covered by a contract cause the net total number of the new jobs created to be fewer than the number agreed to, then the business beneficiary shall return the portion of any funds received pursuant to the repayment formula established by the contract.

3. Notwithstanding any provision in this section or in the guidelines, prior to executing any such contract with a business beneficiary, the political subdivision shall provide a copy of the proposed contract to the Attorney General. The Attorney General shall review the proposed contract (i) for enforceability as to its provisions and (ii) to ensure that it is in appropriate legal form. The Attorney General shall provide any written suggestions to the political subdivision within seven days of his receipt of the copy of the contract. The Attorney General's suggestions shall be limited to the enforceability of the contract's provisions and the legal form of the contract.

4. Notwithstanding any provision in this section or in the guidelines, a political subdivision shall not expend, distribute, pledge, use as security, or otherwise use any award from the Fund unless and until such contract as described herein is executed with the business beneficiary.

G. Within the 30 days immediately following June 30 and December 30 of each year, the Governor shall provide a report to the Chairmen of the House Committees on Appropriations and Finance and the Senate Committee on Finance which shall include, but is not limited to, the following information regarding grants and loans awarded from the Fund during the immediately preceding six-month period for economic development projects: the name of the company that is the business beneficiary of the grant or loan and the type of business in which it engages; the location (county, city, or town) of the project; the amount of the grant or loan committed from the Fund and the amount of all other funds committed by the Commonwealth from other sources and the purpose for which such grants, loans, or other funds will be used; the amount of all moneys or funds agreed to be provided by political subdivisions and the purposes for which they will be used; the number of new jobs agreed to be created by the business beneficiary; the amount of investment in the project agreed to be made by the business beneficiary; the timetable for the completion of the project and new jobs created; the prevailing average wage; and the average wage (excluding fringe benefits) agreed to be paid in the new jobs.

H. The Governor shall provide grants and commitments from the Fund in an amount not to exceed the dollar amount contained in the Fund. If the Governor commits funds for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve the funds the Governor has committed, and the funds shall remain in the Fund for those future fiscal years. No grant or loan shall be payable in the years beyond the existing appropriation act unless the funds are currently available in the Fund.

I. On a quarterly basis, the Virginia Economic Development Partnership shall notify the Governor, his campaign committee, and his political action committee of awards from the Fund made in the

prior quarter. Within 18 months of the date of each award from the Fund, the Governor, his campaign committee, and his political action committee shall submit to the Virginia Conflict of Interest and Ethics Advisory Council established in § 30-355 a report listing any contribution, gift, or other item with a value greater than $100 provided by the business beneficiary of such award to the Governor, his campaign committee, or his political action committee, respectively, during (i) the period in which the business beneficiary's application for such award was pending and (ii) the one-year period immediately after any such award was made.

1996, cc. 590, 598, 859, § 2.1-51.6:5; 1999, cc. 787, 816; 2001, c. 844; 2006, cc. 251, 890; 2007, c. 654; 2010, cc. 78, 470, 580, 611, 735, 768; 2011, cc. 539, 574, 587; 2013, c. 547; 2015, cc. 763, 777; 2016, c. 641.

§ 2.2-116. Service on board of national tobacco trust entity

The Governor may serve in his official capacity on the board of directors of any entity established to ensure the implementation in the Commonwealth of a national tobacco trust established to provide payments to tobacco growers and tobacco quota owners to ameliorate adverse economic consequences resulting from a national settlement of states' claims against tobacco manufacturers.

2000, c. 1048, § 2.1-41.3; 2001, c. 844.

§ 2.2-117. Governor to administer anti-crime partnership program

It shall be the responsibility of the Governor to establish and administer an anti-crime partnership program within the Commonwealth and to authorize, direct, and coordinate existing and future activities of agencies of the Commonwealth in such program. The Governor, in addition to all other duties and responsibilities conferred on him by the Constitution and laws of the Commonwealth, may enter into written anti-crime partnership agreements with political subdivisions of the Commonwealth to assist and enhance their ability to reduce the incidence of violent and drug-related crime and fear of crime.

In addition to such other terms and conditions to which the parties agree, each partnership agreement shall (i) provide for the creation of a partnership committee to advise and direct the partnership, (ii) enumerate the responsibilities of the Commonwealth and the political subdivisions involved, and (iii) state the duration of the partnership, providing for dates on which the partnership will begin and end.

The Governor may provide to anti-crime partnerships established pursuant to this section such technical and personnel resources of the Commonwealth as he determines and such financial resources as provided in the general appropriation act.

1992, c. 663, § 2.1-51.6:3; 2001, c. 844.

§ 2.2-118. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 104.

§ 2.2-119. Governor to administer highway safety program and secure benefits to Commonwealth under federal Highway Safety Act of 1966

It shall be the responsibility of the Governor to administer the highway safety program within the Commonwealth and to authorize, direct and coordinate existing and future activities of agencies of the Commonwealth and its political subdivisions in such program. The Governor, in addition to all other duties and responsibilities conferred on him by the Constitution and laws of the Commonwealth, may contract and do all other things necessary on behalf of the Commonwealth to secure the full benefits available to the Commonwealth under the federal Highway Safety Act of 1966, and any amendments thereto, and in so doing, cooperate with federal and state agencies, private and public agencies, interested organizations, and individuals, to effectuate the purposes of that act and any amendments thereto, and the highway safety program within the Commonwealth.

The Governor shall be the official having the ultimate responsibility for dealing with the United States government with respect to programs and activities pursuant to the federal Highway Safety Act of 1966 and any amendments thereto. To that end he shall be responsible for related activities of any and all departments and agencies of the Commonwealth and its political subdivisions. He may designate such persons, agencies and commissions to assist him in coordinating the activities contemplated under the federal act, this section, and the state's highway safety program.

1968, c. 160, § 2.1-51.6; 2001, c. 844.

§ 2.2-120. Powers with respect to state-owned motor vehicles

A. The Governor may prescribe, by general or special executive orders, regulations for the purchase, use, storage, maintenance and repair of all motor vehicles owned by the Commonwealth, and in the possession of any state department, institution or agency where his supervision is not forbidden by the Constitution.

B. The Governor may use any building or land owned by the Commonwealth, and not required to be used for other purposes, for storing and garaging state-owned motor vehicles. He may employ watchmen or guards, mechanics and other labor to repair and service such vehicles, and provide for the purchase of gasoline, oil and other supplies for such vehicles, and allocate among the various departments and agencies using such vehicles their proportionate part of the cost of repairs, servicing, gasoline, oil, and other supplies.

C. The Governor may create in the State Treasurer's office a special fund to be reflected on the books of the Comptroller, out of which all costs and expenses incurred pursuant to this section shall be paid. All allocations of costs and charges for repairing and servicing motor vehicles made against any institution, agency, or department shall, when approved by the department head, be paid into the special fund by interdepartmental transfers on the Comptroller's books. All funds so paid or transferred into the special fund are appropriated for the purposes of this section and shall be paid out on warrants of the Comptroller issued upon vouchers signed by the state officer or employee designated by the Governor.

D. The Governor may, by executive order or regulation, impose upon the Director of the Department of Planning and Budget, or any other agency of the executive branch of the state government, any or all administrative duties pertaining to the administration of this section.

E. If any state officer, agent or employee fails to comply with any rule, regulation or order of the Governor made pursuant to this section, the Comptroller shall, upon order of the Governor, refuse to issue any warrant on account of expenses incurred, or to be incurred in the purchase, operation, maintenance, or repair of any motor vehicle now or to be in the possession or under the control of such officer, agent or employee, or the Governor may order some state officer or agent to take possession of the vehicle and transfer it to some other department, institution, agency, officer, agent or employee, or to make such other disposition as the Governor may direct.

Code 1950, § 2-42; 1966, c. 677, § 2.1-47; 2001, c. 844.

§ 2.2-121. Approval of purchase of passenger-type automobile; transfer and valuation of surplus vehicles

No passenger-type automobile shall be purchased by the Commonwealth or any officer or employee on behalf of the Commonwealth without the prior written approval of the Governor. The Governor may transfer surplus motor vehicles among the departments, institutions and agencies, and the Director of the Department of Accounts shall determine the value of the surplus equipment for the purpose of maintaining the financial accounts of the departments, agencies and institutions affected by such transfers.

1954, c. 365, § 2-42.1; 1966, c. 677, § 2.1-48; 2001, c. 844.

§ 2.2-122. Commercial use of seals of the Commonwealth

A. Notwithstanding the provisions of § 1-505, the Governor may authorize the use of the seals of the Commonwealth for commercial purposes upon a finding that such use promotes an appropriate image of the Commonwealth, its heritage and its history, and that such use is carried out in accordance with the laws of the Commonwealth. In considering whether the use of the seals in association with a product promotes an appropriate image of the Commonwealth, preference shall be given to products that (i) preserve traditional methods of production, including handcrafting techniques, (ii) enhance public appreciation of the Commonwealth's aesthetic values, and (iii) incorporate workmanship and materials of the highest quality. A prospective licensee shall be deemed qualified to protect and promote the image of the Commonwealth if it holds licenses to produce products associated with museums and sites of major historical importance in the Commonwealth, including but not limited to homes of Presidents of the United States and restored historical areas.

B. The Governor may direct the State Treasurer to cause to be minted gold, platinum, and silver coins for commemorative use that bear the seals of the Commonwealth on the obverse side of the coin and scenes of natural or historically significant locations in the Commonwealth as recommended by the Board of Directors of the Virginia Tourism Authority on the reverse side. Except as

provided in subsection C, proceeds from the sale of such coins shall be deposited in the Cooperative Marketing Fund established pursuant to § 2.2-2319.

C. The Secretary of the Commonwealth and the Director of the Division of Purchases and Supply shall assist the Governor in determining the appropriateness of (i) any contract entered into for the commercial use of the seals of the Commonwealth, (ii) the product intended to be sold, (iii) any marketing activities undertaken to promote the sale of the product, and (iv) the pricing structure, including royalties to be paid to the Commonwealth for such use and sale. Any such royalties paid to the Commonwealth shall be deposited in the general fund.

1995, c. 295, § 2.1-51.6:4; 2001, c. 844; 2005, c. 839; 2011, c. 755; 2013, c. 763.

§ 2.2-123. Authority over rooms and space in public buildings

Rooms and space in public buildings at the seat of government, other than the Capitol, whether the rooms or space are occupied, may be vacated, assigned, and reassigned by the Governor to such departments, divisions, agencies, and officers of the Commonwealth as the Governor deems proper. The Governor shall not vacate, assign or reassign any rooms or space occupied by the Supreme Court, the General Assembly, the State Corporation Commission or other independent agencies, without the consent and approval of such bodies.

Code 1950, § 2-41; 1966, c. 677, § 2.1-46; 2001, c. 844.

§ 2.2-124. Regulation of athletic leaves of absence

A. The Governor shall establish rules to provide for the regulation of athletic leaves of absence for state employees as follows:

1. A public employee who qualifies as a member of the United States team for athletic competition on the Pan American or Olympic level in a sport contested in such competition may be granted leave of absence upon approval of the appropriate cabinet secretary without loss or reduction of pay, time, annual leave, or efficiency rating for the purpose of preparing for and engaging in competition on such levels. In no event shall the paid leave under this subdivision exceed the period of the official training camp and competition combined or ninety calendar days a year, whichever is less. A public employee who qualifies and applies as a member of the United States team for athletic competition on the international level other than the Pan American or Olympic games may be granted a leave of absence without pay.

2. A public employee who qualifies and applies for an athletic leave of absence under the provisions of this subdivision shall notify his employer of his desire for such leave at least thirty days before the effective date of the leave; however, if the official training camp for international or Olympic games commences less than thirty days after the employee's selection as a member of the United States team, the employee shall notify his employer of his desire for athletic leave immediately upon his selection as a member of such team.

3. All or any portion of the approved athletic leave of absence provided for in this subdivision may be canceled retroactively by the employer if the employee does not participate in the training or

competition for approved reasons or for reasons that are unrelated to the physical and/or mental ability to compete.

4. If the absence of a state employee necessitates the hiring of a substitute during the employee's absence, the Commonwealth shall reimburse the governmental branch, department, agency, board, institution, or commission of the Commonwealth for actual costs incurred in employing the substitute.

B. As used in this section, unless the context requires a different meaning:

"Public employee" means any full-time employee of the Commonwealth or of any branch of the state government, of any executive department of the Commonwealth, or of any agency, board, institution or commission of the State; however, no elected official shall be considered a public employee for purposes of this section.

"Athlete" means an individual who is dedicated to improving a skill or skills in a particular physical exercise, sport, or game requiring strength, agility, or stamina and for whom this effort does not result in financial gain or remuneration.

"International or Olympic competition" means any athletic competition involving athletes from two or more nation-states.

1981, c. 335, § 2.1-114.2:1; 2001, c. 844.

§ 2.2-125. Governor authorized to accept certain property from Confederate Memorial Literary Society

The Governor may accept, in the name of the Commonwealth, the property known as The White House of the Confederacy, any building that may be erected by the Confederate Memorial Literary Society, and the property known as The Lee House, located at 707 East Franklin Street in the City of Richmond, together with any moneys or other assets, including items being housed and displayed in such buildings or any of them, belonging to the Confederate Memorial Literary Society. The buildings and their contents thereof shall thereafter be preserved and maintained for historic purposes by the Commonwealth. Upon the transfer of title to the property to the Commonwealth, the Governor shall appoint a board of trustees consisting of thirteen persons appointed from the Commonwealth at large, which shall thereafter be charged with the preservation and maintenance of the properties and the administration of any funds that may be received or donated by the Confederate Memorial Literary Society or from any other source. The members of the board first appointed shall be appointed as follows: four for terms of four years, four for terms of three years, four for terms of two years, and one for a term of one year. Subsequent appointments shall be for terms of four years except appointments to fill vacancies, which shall be for the unexpired terms.

The board shall appoint a treasurer, who shall have custody of its funds and shall be bonded in such amount as the board may determine. Expenditures from such funds shall be made by the

treasurer as the board directs, for any purpose, in the discretion of the board, consonant with the purpose for which the same are donated.

The board may fix, charge and collect admission fees to the buildings under its custody and control, and expend moneys so received in the upkeep, maintenance and operation of such buildings as historic shrines.

1966, c. 412, §§ 9-84.1, 9-84.2, 9-84.3, 9-84.4; 2001, c. 844.

§ 2.2-126. Disposition of official correspondence

A. Before the end of his term of office, the Governor shall have delivered to The Library of Virginia for safekeeping all correspondence and other records of his office during his term. This section shall not apply to correspondence or other records of a strictly personal or private nature, or active files necessary for the transaction of business by the Office of the Governor, the decision thereon to be made by the Governor after consultation with the Librarian of Virginia. Records delivered to The Library of Virginia shall be made accessible to the public, once cataloging has been completed.

B. Should any subsequent Governor need such records for the transaction of business of the Office of the Governor, the records may be reviewed at the Library and copied, if necessary, but the Governor and his staff shall ensure that the original records are preserved intact and remain in The Library of Virginia.

Code 1950, § 2-40.1; 1966, c. 677, § 2.1-45; 1988, c. 476; 1994, c. 64; 2001, c. 844; 2003, c. 590.

Article 2 - EXECUTIVE REORGANIZATION

§ 2.2-127. Purpose

The Governor shall from time to time examine the organization of all executive agencies and shall determine what changes therein are necessary to:

1. Promote better execution of the laws, the more effective management of the executive branch of state government and of its agencies and functions, and the expeditious administration of the public business;

2. Reduce expenditures and promote economy to the fullest extent consistent with the efficient operation of state government;

3. Increase the efficiency of the operations of state government to the fullest extent practicable;

4. Group, coordinate, and consolidate agencies and functions of state government, as nearly as may be, according to major purposes;

5. Reduce the number of agencies by consolidating those having similar functions under a single head, and to abolish such agencies or functions thereof that are not necessary for the efficient conduct of the state government; and

6. Eliminate overlapping and duplication of effort.

1977, c. 505, § 2.1-8.1; 2001, c. 844.

§ 2.2-128. Definitions

For the purpose of this chapter:

"Agency" means an administrative unit of state government, including any department, institution, commission, board, council, authority, or other body, however designated.

"Board" means any collegial body in the executive branch of state government created by the General Assembly.

"Function" means an activity, assignment or set of operations.

"Reorganization" means a transfer, consolidation, coordination, or abolition of a function, or the assignment or reassignment of responsibility and authority for the execution of a function.

1977, c. 505, § 2.1-8.2; 2001, c. 844.

§ 2.2-129. Reorganization plans

When the Governor, after investigation, finds that the:

1. Transfer of the whole or a part of an agency, or of the whole or a part of the functions thereof, to the jurisdiction and control of another agency;

2. Abolition of all or a part of the functions of an agency;

3. Transfer or abolition of the whole or a part of the responsibilities of a board;

4. Abolition of a board;

5. Consolidation or coordination of the whole or a part of an agency, or of the whole or a part of the functions thereof, with the whole or a part of another agency or the functions thereof;

6. Consolidation or coordination of a part of an agency or the functions thereof with another part of the same agency or the functions thereof;

7. Abolition of the whole or a part of an agency which agency or part does not have, or on the taking effect of the reorganization plan will not have, any functions; or

8. Authorization for the exercise of functions or responsibilities by an agency, board, or officer to whom such functions or responsibilities have been transferred; is necessary to accomplish one or more of the purposes of § 2.2-127, he shall prepare a plan for reorganization and transmit the plan to each house of the General Assembly at least forty-five days prior to the commencement of a regular or special session of the General Assembly.

1977, c. 505, § 2.1-8.3; 2001, c. 844.

§ 2.2-130. Contents of reorganization plans

A reorganization plan transmitted by the Governor under § 2.2-129 :

1. May change the name or title of any agency, agency head, or board, council, commission or other collegial body affected by a reorganization, and shall designate the name or title of any new agency, agency head, or collegial body resulting from a reorganization;

2. May provide for the appointment of the head of any agency affected by, or resulting from, a reorganization, for an initial term not to exceed the balance of the term of the incumbent Governor, and for four-year terms thereafter;

3. May provide for the compensation of the head of an agency, not to exceed the rate found by the Governor to be applicable to comparable officers in the executive branch;

4. Shall provide for the transfer or other disposition of the records, property, and personnel affected by a reorganization;

5. Shall provide for the transfer of such unexpended balances of appropriations, and other funds, available for use in connection with a function or agency affected by a reorganization, or for the use of the agency that has the functions after the reorganization plan is effective. However, the unexpended balances so transferred may be used only for the purposes for which the appropriation was originally made; and

6. Shall provide for terminating the affairs of an agency that is abolished.

1977, c. 505, § 2.1-8.4; 2001, c. 844.

§ 2.2-131. Limitation on powers

A reorganization plan may not provide for, and a reorganization under this chapter shall not have the effect of, authorizing an agency to exercise a function that is not authorized by law at the time the plan is transmitted to the General Assembly.

1977, c. 505, § 2.1-8.5; 2001, c. 844.

§ 2.2-132. Approval by the General Assembly; effective date; publication

A. A reorganization plan transmitted by the Governor to the General Assembly under this chapter shall become effective only if the Senate and the House of Delegates each approve the reorganization plan by a resolution by a majority of the members present and voting in each house. Any portion of the reorganization plan may be deleted by either the Senate or the House of Delegates in the resolution approving the plan. The Governor may withdraw a reorganization plan transmitted to the General Assembly under this chapter at any time before its effective date. A reorganization plan or portions thereof as approved by the Senate and the House of Delegates shall become effective on the first day of the fourth month following the adjournment of the General Assembly at which such plan was approved, unless a different date is specified in the plan.

B. A reorganization plan that is adopted pursuant to this section shall be printed in the Acts of Assembly and in the Code of Virginia.

1977, c. 505, §§ 2.1-8.6, 2.1-8.7; 2001, c. 844.

§ 2.2-133. Effect on other laws, pending legal proceedings, and unexpended appropriations

A. A statute enacted, and a regulation or other action made, prescribed, issued, granted, or performed in respect of or by an agency or function affected by a reorganization under this chapter, before the effective date of the reorganization, has, except to the extent rescinded, modified,

superseded, or made inapplicable by or under authority of law or by the abolition of a function, the same effect as if the reorganization had not been made. However, if the statute, regulation or other action has vested the functions in the agency from which it is removed under the reorganization plan, the function, insofar as it is to be exercised after the plan becomes effective, shall be deemed as vested in the agency under which the function is placed by the plan.

B. For the purpose of subsection A, "regulation or other action" means a regulation, rule, order, policy, determination, directive, authorization, permit, privilege, requirement, designation, or other action.

C. A suit, action, or other proceeding lawfully commenced by or against the head of an agency or other officer of the Commonwealth or member of a state board, council, commission or other collegial body, in his official capacity or in relation to the discharge of his official duties, shall not abate by reason of the taking effect of a reorganization plan under this chapter.

D. The appropriations or portions of appropriations unexpended by reason of the operation of this chapter shall not be used for any purpose, but shall revert to the state treasury.

1977, c. 505, § 2.1-8.8; 2001, c. 844.

Article 3 - GUBERNATORIAL COMMISSIONS

§ 2.2-134. Authority to create gubernatorial commissions

A. The Governor may create gubernatorial commissions for purposes related to his authority and responsibility. These entities shall be referred to as "Commissions."

B. For the purpose of this chapter, "gubernatorial commission" includes any temporary study group, task force, blue ribbon panel or any similar collegial body created by the Governor.

1984, c. 615, §§ 2.1-51.35, 2.1-51.36; 2001, c. 844.

§ 2.2-135. Limitations and requirements

A. Each gubernatorial commission shall be created by executive order. The executive order shall specify (i) the specific duties of the commission, (ii) the date of creation, (iii) the date of expiration, (iv) the sources from which staff support are to be provided and a reasonable estimate of the amount of staff support expected over the lifetime of the commission, (v) an estimate of the costs to be incurred, and (vi) the source of funding.

B. Funding for gubernatorial commissions shall be provided only from funds (i) appropriated for the Governor's discretionary use, (ii) appropriated for the purposes for which the task force was established, or (iii) contributed by the private sector for the purposes for which the task force was established. Staff support for gubernatorial commissions may be provided by agencies or institutions with related purposes.

C. Gubernatorial commissions shall be created for a period not to exceed one year. Upon reevaluation, a commission may be extended one time by issuance of a new executive order for a

period not to exceed one additional year. A commission shall not extend beyond the term of the Governor under whom it is created.

D. The Governor shall make a report every six months to the Senate Committee on Finance and House Committee on Appropriations specifying for each gubernatorial commission the amount and costs of staff support provided and the sources of the staff support.

1984, c. 615, § 2.1-51.37; 2001, c. 844.

Article 4 - SECURITY OF GOVERNMENT DATABASES

§§ 2.2-136 through 2.2-138. Repealed
Repealed by Acts 2002, c. 247, effective July 1, 2002.

Chapter 2 - GOVERNOR'S SECRETARIES

Article 1 - GENERAL PROVISIONS

§ 2.2-200. Appointment of Governor's Secretaries; general powers; severance
A. The Governor's Secretaries shall be appointed by the Governor, subject to confirmation by the General Assembly if in session when the appointment is made, and if not in session, then at its next succeeding session. Each Secretary shall hold office at the pleasure of the Governor for a term coincident with that of the Governor making the appointment or until a successor is appointed and qualified. Before entering upon the discharge of duties, each Secretary shall take an oath to faithfully execute the duties of the office.

B. Each Secretary shall be subject to direction and supervision by the Governor. Except as provided in Article 4 (§ 2.2-208 et seq.), the agencies assigned to each Secretary shall:

1. Exercise their respective powers and duties in accordance with the general policy established by the Governor or by the Secretary acting on behalf of the Governor;

2. Provide such assistance to the Governor or the Secretary as may be required; and

3. Forward all reports to the Governor through the Secretary.

C. Unless the Governor expressly reserves such power to himself and except as provided in Article 4 (§ 2.2-208 et seq.), each Secretary may:

1. Resolve administrative, jurisdictional, operational, program, or policy conflicts between agencies or officials assigned;

2. Direct the formulation of a comprehensive program budget for the functional area identified in § 2.2-1508 encompassing the services of agencies assigned for consideration by the Governor;

3. Hold agency heads accountable for their administrative, fiscal and program actions in the conduct of the respective powers and duties of the agencies;

4. Direct the development of goals, objectives, policies and plans that are necessary to the effective and efficient operation of government;

5. Sign documents on behalf of the Governor that originate with agencies assigned to the Secretary; and

6. Employ such personnel and to contract for such consulting services as may be required to perform the powers and duties conferred upon the Secretary by law or executive order.

D. Severance benefits provided to any departing Secretary shall be publicly announced by the Governor prior to such departure.

E. As used in this chapter, "Governor's Secretaries" means the Secretary of Administration, the Secretary of Agriculture and Forestry, the Secretary of Commerce and Trade, the Secretary of Education, the Secretary of Finance, the Secretary of Health and Human Resources, the Secretary of Natural Resources, the Secretary of Public Safety and Homeland Security, the Secretary of Technology, the Secretary of Transportation, and the Secretary of Veterans and Defense Affairs.

1972, c. 641, § 2.1-51.7; 1975, c. 390; 1976, cc. 729, 730, 732, 733, 734, 743, §§ 2.1-51.8:1, 2.1-51.13, 2.1-51.14, 2.1-51.16, 2.1-51.17, 2.1-51.26; 1984, c. 720, § 2.1-51.33; 1986, c. 492, § 2.1-51.39; 1998, c. 646; 1990, cc. 1, 317, §§ 2.1-51.41, 2.1-51.42; 1993, c. 699; 1996, cc. 500, 617; 1998, c. 793; 1999, cc. 412, 421, 433, §§ 2.1-51.44, 2.1-51.45; 2000, c. 937; 2001, c. 844; 2004, cc. 940, 963; 2006, c. 254; 2011, cc. 780, 858; 2014, cc. 115, 490.

§ 2.2-201. Secretaries; general; compensation

A. Each Secretary shall be considered an extension of the Governor in the management coordination and cohesive direction of the executive branch of state government ensuring that the laws are faithfully executed.

B. Each Secretary shall be paid the compensation fixed by law.

1972, c. 641, § 2.1-51.10; 1984, c. 720, § 2.1-51.10:1; 2001, c. 844.

§ 2.2-202. Payment of expenses of office

The expenses of the offices of the Governor's Secretaries shall be paid from funds provided for the purpose by law; however, in addition, the Governor may supplement such funds from appropriations made to his office for the executive control of the Commonwealth or for discretionary purposes.

1972, c. 641, § 2.1-51.12; 2001, c. 844.

Article 2 - SECRETARY OF ADMINISTRATION

§ 2.2-203. Position established; agencies for which responsible

The position of Secretary of Administration (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies and boards: Department of Human Resource Management, Department of General Services, Compensation Board, and Secretary of the

Commonwealth. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

1976, c. 743, §§ 2.1-51.25, 2.1-51.27; 1978, c. 84; 1980, c. 620; 1981, c. 315; 1984, cc. 720, 746; 1985, c. 447; 1988, cc. 424, 839; 1993, c. 542; 1994, cc. 4, 85; 1995, c. 837; 1997, c. 858; 1999, cc. 412, 421, 433; 2000, cc. 66, 657, 947, 1006; 2001, c. 844; 2002, c. 572; 2003, cc. 197, 657, 670, 884; 2006, c. 150; 2008, cc. 387, 689; 2012, cc. 803, 835.

§ 2.2-203.1. Secretary to establish telecommuting policy

A. The Secretary, in cooperation with the Secretary of Technology, shall establish a comprehensive statewide telecommuting and alternative work schedule policy under which eligible employees of state agencies, as determined by state agencies, may telecommute or participate in alternative work schedules, and the Secretary shall periodically update such policy as necessary.

B. The telecommuting and alternative work schedule policy described in subsection A shall include, but not be limited to, model guidelines, rules and procedures for telecommuting and participation in alternative work schedules, and identification of the broad categories of positions determined to be ineligible to participate in telecommuting and the justification for such a determination. Such policy may also include an incentive program, to be established and administered by the Department of Human Resource Management, that may encourage state employees to telecommute or participate in alternative work schedules and that may encourage the state agencies' management personnel to promote telecommuting and alternative work schedules for eligible employees.

2001, c. 405, § 2.1-51.31:1; 2004, cc. 701, 755; 2005, c. 421; 2009, c. 86.

§ 2.2-203.2. Repealed

Repealed by Acts 2009, c. 180, cl. 2.

§ 2.2-203.2:1. Secretary to report state job elimination due to privatization

On or before November 30 of each year, the Secretary shall report to the Governor and the General Assembly on the number of state jobs eliminated in the immediately preceding fiscal year due to the privatization of commercial activities to a commercial source.

As used in this section, unless the context requires a different meaning:

"Commercial activities" means an activity performed by or for state government that is not an inherently governmental activity and that may feasibly be obtained from a commercial source at lower cost than the activity being performed by state employees.

"Commercial source" means any business or other concern that is eligible for a contract award in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

2005, c. 476; 2012, cc. 803, 835.

§ 2.2-203.2:2. Promotion of alternative dispute resolution procedures

The Secretary may convene ad hoc working groups to promote alternative dispute resolution procedures.

2012, cc. 803, 835.

Article 2.1 - SECRETARY OF AGRICULTURE AND FORESTRY

§ 2.2-203.3. Position established; agencies for which responsible; additional duties

The position of Secretary of Agriculture and Forestry (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Forestry, Department of Agriculture and Consumer Services, Virginia Agricultural Council, and Virginia Racing Commission. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

2004, cc. 940, 963; 2008, c. 860; 2014, c. 432.

Article 3 - SECRETARY OF COMMERCE AND TRADE

§ 2.2-204. (Effective until December 1, 2016) Position established; agencies for which responsible; additional duties

The position of Secretary of Commerce and Trade (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Virginia Economic Development Partnership Authority, Virginia Tourism Authority, Department of Labor and Industry, Department of Mines, Minerals and Energy, Virginia Employment Commission, Department of Professional and Occupational Regulation, Department of Housing and Community Development, Department of Small Business and Supplier Diversity, Virginia Housing Development Authority, Virginia Resources Authority, Tobacco Region Revitalization Commission, and Board of Accountancy. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

The Secretary shall implement the provisions of the Virginia Biotechnology Research Act (§ 2.2-5500 et seq.).

1986, c. 492, §§ 2.1-51.38, 2.1-51.40; 1988, cc. 67, 173; 1989, c. 165; 1991, c. 337; 1993, cc. 499, 699; 1994, c. 472, § 2.1-51.39:2; 1995, c. 89; 1996, cc. 589, 590, 598, 599, 702; 1999, cc. 412, 421, 433; 2001, cc. 832, 844; 2004, cc. 57, 940, 963; 2013, c. 482; 2014, c. 432.

§ 2.2-204. (Effective December 1, 2016) Position established; agencies for which responsible; additional duties

The position of Secretary of Commerce and Trade (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Virginia Economic Development Partnership Authority, Virginia International Trade Corporation, Virginia Tourism Authority, Department of Labor and Industry, Department of Mines, Minerals and Energy, Virginia Employment Commission, Department of Professional and Occupational Regulation, Department of Housing and Community Development, Department of Small Business and Supplier Diversity, Virginia

Housing Development Authority, Virginia Resources Authority, Tobacco Region Revitalization Commission, and Board of Accountancy. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

The Secretary shall implement the provisions of the Virginia Biotechnology Research Act (§ 2.2-5500 et seq.).

1986, c. 492, §§ 2.1-51.38, 2.1-51.40; 1988, cc. 67, 173; 1989, c. 165; 1991, c. 337; 1993, cc. 499, 699; 1994, c. 472, § 2.1-51.39:2; 1995, c. 89; 1996, cc. 589, 590, 598, 599, 702; 1999, cc. 412, 421, 433; 2001, cc. 832, 844; 2004, cc. 57, 940, 963; 2013, c. 482; 2014, c. 432; 2016, c. 749.

§ 2.2-205. Economic development policy for the Commonwealth

A. During the first year of each new gubernatorial administration, the Secretary, with the assistance of a cabinet-level committee appointed in accordance with subsection B, shall develop and implement a written comprehensive economic development policy for the Commonwealth. In developing this policy, the Secretary and the committee shall review the economic development policy in effect at the commencement of the Governor's term of office. The Secretary shall make such revisions to the existing policy as the Secretary deems necessary to ensure that it is appropriate for the Commonwealth. Once the policy has been adopted by the Secretary and the committee and approved by the Governor, it shall be submitted to the General Assembly for its consideration.

B. During the first year of each new gubernatorial administration, the Governor shall issue an executive order creating a cabinet-level committee to assist the Secretary in the development of the comprehensive economic development policy for the Commonwealth. The Secretary shall be the chairman of the committee, and the Secretaries of Administration, Agriculture and Forestry, Education, Health and Human Resources, Natural Resources, Technology, and Transportation shall serve as committee members. The Governor may also appoint members of regional and local economic development groups and members of the business community to serve on the committee.

1991, c. 562, § 2.1-51.39:1; 1993, c. 699; 2001, c. 844; 2004, c. 989; 2015, c. 166.

§ 2.2-205.1. Economic Crisis Strike Force

A. There is hereby established the Economic Crisis Strike Force (Strike Force) for the purpose of serving as a working group to respond as needed to economic disasters in Virginia communities by (i) immediately providing a single point of contact for citizens in affected communities to assist with accessing available government and private sector services and resources, (ii) assisting localities in developing short-term and long-term strategies for addressing the economic crisis, and (iii) identifying opportunities for workforce retraining, job creation, and new investment.

B. The Strike Force shall be chaired by the Secretary of Commerce and Trade and be deployed at the direction of the Governor. Membership shall include high level representatives designated by the Secretaries of Education and Health and Human Resources and by the respective heads of the

following agencies: the Department of Agriculture and Consumer Services, the Department of Education, the Department of Housing and Community Development, the Department of Labor and Industry, the Department of Medical Assistance Services, the Department of Small Business and Supplier Diversity, the Department of Social Services, the Virginia Community College System, the Virginia Employment Commission, the Virginia Economic Development Partnership, and the Virginia Tourism Authority. The Strike Force shall also include representatives from such other agencies as may be designated by the Governor to meet the needs of a particular affected community. In addition, the Governor may designate such citizens as he deems appropriate to advise the Strike Force.

C. Staff support for the Strike Force shall be provided by the Office of the Governor and the Secretary of Commerce and Trade. All agencies of the Commonwealth shall assist the Strike Force upon request.

D. On or before December 1 of each year, the Strike Force shall report to the Governor and the General Assembly on its activities.

E. For the purposes of this section, "economic disaster" means an employment loss of at least five percent during the immediately preceding six-month period, the closure or downsizing of a major regional employer in an economically distressed area, a natural disaster or act of terrorism for which the Governor has declared a state of emergency, or other economic crisis situations, which in the opinion of the Governor adversely affect the welfare of the citizens of the Commonwealth.

2006, cc. 79, 80; 2013, c. 482.

§ 2.2-206. Urban issues; report; responsibilities of the Secretary

A. In order to evaluate and promote the economic potential and development of the urban areas in the Commonwealth, during the first year of each new gubernatorial administration, the Secretary, with the assistance of a cabinet-level committee appointed in accordance with subsection B, shall develop a report on the condition of the state's urban areas and establishing priorities for addressing those conditions. The report shall include the following components:

1. A review of economic and social conditions in the cities of the Commonwealth;

2. The identification of inequities between those urban areas experiencing economic growth and relatively low fiscal stress and those urban areas experiencing economic decline and relatively high levels of fiscal stress;

3. The establishment of specific and quantifiable benchmarks for addressing economic and social conditions and inequities within urban areas;

4. Prioritized recommendations for specific actions by state agencies intended to meet the established performance benchmarks within a prescribed schedule; and

5. A system for tracking agency progress in meeting the benchmarks during the succeeding biennia.

B. During the first year of each new gubernatorial administration, the Governor shall issue an executive order creating a cabinet-level committee to assist the Secretary in the development of an urban policy vision and priorities for the Commonwealth. The Secretary shall be the chairman of the committee, and the Secretaries of Education, Health and Human Resources, Natural Resources and Transportation shall serve as committee members. The Governor may also appoint representatives of local government from Virginia's urban areas to serve as committee members. During the third year of each new gubernatorial administration the Secretary shall review and report on the performance of each agency in meeting the established benchmarks.

1999, c. 519, § 2.1-51.39:3; 2001, c. 844; 2004, c. 238.

§ 2.2-206.1. (Expires July 1, 2017) Entrepreneur-in-Residence Program

A. There is hereby created the Entrepreneur-in-Residence Program, hereafter referred to as "the Program," as a pilot program to improve outreach by state government to the private sector. The Program shall be administered by the Secretary or his designee. The objectives of the Program are (i) to strengthen coordination and interaction between state government and the private sector on issues relevant to entrepreneurs and small business concerns and (ii) to make state government programs and operations simpler, easier to access, more efficient, and more responsive to the needs of and issues related to small business concerns and entrepreneurs.

B. The Secretary may appoint up to 10 individuals per year to serve as entrepreneurs-in-residence with state agencies. Appointees shall have demonstrated success in working with small business concerns and entrepreneurs or have successfully developed, invented, or created a product and brought the product to the marketplace. Appointments shall be for a period of two years. Any costs incurred in the operation of the program shall be provided from nonstate sources of funding.

C. Entrepreneurs-in-residence shall serve without compensation but, at the discretion of the head of the agency they were appointed to serve, may receive reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825.

D. The entrepreneur-in-residence for each agency shall:

1. Assist the agency in improving outreach to small business concerns and entrepreneurs;

2. Provide recommendations on inefficient or duplicative programs, if any;

3. Provide recommendations to the Secretary and the head of the agency on methods to improve program efficiency at the agency or new initiatives, if any, that may be instituted at the agency;

4. Facilitate meetings and forums to educate small business concerns and entrepreneurs on programs or initiatives of the department and the agency to which the entrepreneur-in-residence is appointed;

5. Facilitate in-service sessions with employees of the department on needs and issues to entrepreneurs and small business concerns; and

6. Provide technical assistance or mentorship to small business concerns and entrepreneurs in accessing programs at the department and the agency employing the entrepreneur-in-residence.

E. The Secretary may establish an informal working group of entrepreneurs-in-residence to discuss best practices, experiences, obstacles, opportunities, and recommendations.

F. The Secretary is authorized to enter into an agreement with the Virginia Commonwealth University or other public institution of higher education for the management and oversight of the Program.

G. The provisions of this section shall expire on July 1, 2017.

2013, c. 788; 2014, cc. 63, 700.

§ 2.2-206.2. Economic incentive grant programs; responsibilities of the Secretary

A. By July 15 of each year, the agencies listed in subdivisions B 1 through 7 shall report the information outlined in subsection C to the Secretary of Commerce and Trade for the three prior calendar or fiscal years, as applicable, so that the Secretary may develop and issue a report on the effectiveness of economic development incentive grant programs administered by the Commonwealth in meeting performance goals and stimulating economic activity.

By September 15 of each year, the Secretary shall submit the draft report to the Joint Legislative Audit and Review Commission for its review of the accuracy of the information contained in the report and the effectiveness of the evaluation methods.

The Joint Legislative Audit and Review Commission shall provide its comments on the content of the report and the Secretary's analysis to the Secretary, and such comments shall be included as an appendix to the final report, which shall be submitted to the Chairmen of the House Appropriations and Senate Finance Committees by November 15 of each year.

B. The report shall include a review of allocations from the following economic development incentive programs and funds for the previous three calendar or fiscal years, as applicable, as follows:

1. Virginia Economic Development Partnership: Advanced Shipbuilding Training Facility Grant Program, Aerospace Engine Manufacturing Performance Grant Program, Clean Energy Manufacturing Incentive Grant Program as it was in effect prior to July 1, 2015, Commonwealth's Development Opportunity Fund, Investment Partnership Grant subfund, Major Eligible Employer Grant subfund, Semiconductor Memory or Logic Wafer Manufacturing Performance Grant Program as it was in effect prior to July 1, 2016, Specialized Biotechnology Research Performance Grant Program as it was in effect prior to July 1, 2015, Economic Development Incentive Grant subfund, and any customized incentive grants;

2. Virginia Economic Development Partnership Authority: Virginia Jobs Investment Program;

3. Department of Housing and Community Development: Enterprise Zone Job Creation and Real Property Investment Grant Programs;

4. Tobacco Region Revitalization Commission: Tobacco Region Opportunity Fund;

5. Virginia Tourism Authority: Governor's Motion Picture Opportunity Fund;

6. Virginia Port Authority: Port of Virginia Economic and Infrastructure Development Grant Program; and

7. Innovation and Entrepreneurship Investment Authority: Growth Acceleration Program.

C. The report shall assess the effectiveness of allocations made for each program listed in subsection B. Each agency administering programs outlined in subsection B shall submit the applicable data regarding jobs, wages, capital investment, and any other related information requested by the Secretary of Commerce and Trade for purposes of evaluating economic development incentive programs in meeting their performance goals and stimulating economic activity.

For each program, the report shall include (i) an explanation of the overall goals of the program, describing whether the program is focused on job creation and capital investment or investments are governed by ancillary goals of community development and revitalization or the development of a particular industry sector in the Commonwealth; (ii) for each of the previous three calendar or fiscal years, as applicable, summary information, including the total amount of grant funding made available for the program, the total dollar amount of the grants awarded, the total number of grants awarded, the average dollar amount approved per job and average wage expected, where applicable, and any grant amounts repaid; (iii) for each of the three previous calendar or fiscal years, as applicable, for projects that have reached completion or a performance milestone, an aggregate comparison of the projects' performance measures, including the actual number of jobs created, the actual average wages paid, and the actual amount of capital investment, with the expected number of jobs, assumed average wage, and planned capital investment when the grant awards were made, and the proportion of projects that met or exceeded the project-specific goals relevant to the program; (iv) for each of the three previous calendar or fiscal years, as applicable, for all projects that have reached completion or a performance milestone, an aggregate assessment of the projects' actual rate of return on the Commonwealth's investment compared with the expected rate of return when the grant awards were made; (v) for each of the three previous calendar or fiscal years, as applicable, for all projects that have reached completion or a performance milestone, an aggregate estimate of the projects' total economic impact measured by the Virginia Economic Development Partnership Authority on the basis of estimated state tax revenues generated directly or indirectly by the projects, where applicable; and (vi) for all projects that reached completion five calendar or fiscal years, as applicable, prior to the year of the report, an aggregate final comparison of jobs reported by companies at the time of completion and jobs at the end of the most recent calendar year, and an aggregate final comparison of the projects' rate of return at the time of completion and a five-year rate of return based on the most recent job levels.

2014, c. 817; 2015, cc. 761, 763, 777.

§ 2.2-207. Annual legislative report

Within sixty days prior to the beginning of each regular legislative session, the Secretary and the Secretary of Education shall jointly present a report to the General Assembly summarizing private sector and education partnership programs and recommendations to promote efficiency and growth in business and education partnerships.

1993, cc. 248, 752, § 2.1-51.40:1; 2001, c. 844.

Article 4 - SECRETARY OF EDUCATION

§ 2.2-208. Position established; agencies for which responsible; powers and duties

A. The position of Secretary of Education (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Education, State Council of Higher Education, Virginia Museum of Fine Arts, The Science Museum of Virginia, Frontier Culture Museum of Virginia, The Library of Virginia, Jamestown-Yorktown Foundation, Board of Regents of Gunston Hall, the Commission for the Arts, and the Board of Visitors of the Virginia School for the Deaf and the Blind. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

B. Unless the Governor expressly reserves such a power to himself, the Secretary may (i) resolve administrative, jurisdictional, or policy conflicts between any agencies or officers for which he is responsible and (ii) provide policy direction for programs involving more than a single agency.

C. The Secretary may direct the preparation of alternative policies, plans, and budgets for education for the Governor and, to that end, may require the assistance of the agencies for which he is responsible.

D. The Secretary shall direct the formulation of a comprehensive program budget for cultural affairs encompassing the programs and activities of the agencies involved in cultural affairs.

E. The Secretary shall consult with the agencies for which he is responsible and biennially report to the General Assembly on the coordination efforts among such agencies.

1976, c. 733, §§ 2.1-51.19, 2.1-51.20, 2.1-51.21; 1977, c. 413; 1979, c. 314; 1985, cc. 193, 447, 505; 1986, cc. 335, 603; 1987, c. 458; 1992, c. 630; 1993, cc. 653, 665; 1994, c. 64; 1998, cc. 701, 899; 1999, cc. 840, 855; 2001, c. 844; 2003, c. 452; 2009, c. 210; 2015, c. 140.

§ 2.2-208.1. School Readiness Committee; Secretary to establish

A. In recognition of the fact that early care and education of young children is linked to academic success and workforce readiness, the Secretary of Education, in consultation with the Secretary of Health and Human Resources, and upon receiving recommendations for appointments from the Virginia Education Association, the Virginia School Boards Association, the Virginia Association of Elementary School Principals, the Virginia Council for Private Education, the Virginia Child Care Association, the Virginia Association for Early Childhood Education, and the Virginia

Chamber of Commerce, shall establish and appoint members to the School Readiness Committee (the Committee).

B. The Committee shall have a total membership of no fewer than 27 members that shall consist of seven legislative members, no fewer than 16 nonlegislative citizen members, and four ex officio members. Members shall be appointed as follows: four members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; three members of the Senate to be appointed by the Senate Committee on Rules on the recommendation of the Chair of the Senate Committee on Education and Health; and no fewer than 16 nonlegislative citizen members to be appointed by the Secretary of Education. Nonlegislative citizen members shall include at least three representatives of the office of the Secretary of Education, one representative of the State Council of Higher Education for Virginia, one representative of a four-year public institution of higher education in the Commonwealth with a teacher education program, one representative of a two-year public institution of higher education in the Commonwealth with a teacher education program, one representative of the Virginia Early Childhood Foundation, one representative of the Virginia Association of School Superintendents, four representatives of the private business sector, one early childhood education teacher from a public early childhood education program, one early childhood education teacher from a private early childhood education program, one administrator from a public early childhood education program, and one administrator from a private early childhood education program. The Commissioner of Social Services or his designee, the Secretary of Education or his designee, the Secretary of Health and Human Resources or his designee, and the Superintendent of Public Instruction or his designee shall serve ex officio with voting privileges.

C. In recognition of the fact that one of the most important factors in learning outcomes for young children is the capabilities of the adults who support their growth and learning, the first goal of the Committee is to address the development and alignment of an effective professional development and credentialing system for the early childhood education workforce in the Commonwealth, including the (i) development of a competency-based professional development pathway for practitioners who teach children from birth to age five in both public and private early childhood education programs; (ii) consideration of articulation agreements between associate and baccalaureate degree programs; (iii) review of teacher licensure and education programs, including programs offered at comprehensive community colleges in the Commonwealth, to address competencies specific to early childhood development; (iv) alignment of existing professional development funding streams; and (v) development of innovative approaches to increasing accessibility, availability, affordability, and accountability of the Commonwealth's workforce development system for early childhood education teachers and providers. The Committee shall periodically review the goals set forth in this subsection and other priorities within the early childhood care and education systems and make recommendations to the Board of Education, the State Council of Higher

Education for Virginia, the Department of Social Services, and the Chairmen of the House Committee on Education, the Senate Committee on Education and Health, the House Committee on Health, Welfare and Institutions, and the Senate Committee on Rehabilitation and Social Services. An affirmative vote by a majority of the legislative members in attendance and a majority of nonlegislative members in attendance shall be required for the Committee to adopt any recommendations. The Board of Education shall review the recommendations of the Committee and submit to the Chairmen of the House Committee on Education and the Senate Committee on Education and Health, in advance of the next regular session of the General Assembly, any comments on such recommendations that the Board of Education deems appropriate.

D. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All legislative members and nonlegislative citizen members may be reappointed.

E. After the initial staggering of terms, legislative members and nonlegislative citizen members shall be appointed for terms of three years.

F. No legislative member or nonlegislative citizen member shall serve more than two consecutive three-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

G. The Committee shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The meetings of the Committee shall be held at the call of the chairman or whenever the majority of the members so request.

H. The Virginia Early Childhood Foundation shall provide for the facilitation of the work of the Committee under the direction of the Secretary of Education or his designee and with the guidance of a steering subcommittee that includes the Secretary of Education, the Secretary of Health and Human Resources, one legislative member, one representative of the private business sector, one representative of the Virginia Early Childhood Foundation, and one early childhood education teacher or administrator from a private early childhood education program.

I. The chairman may request and access the expertise of additional representatives and organizations relating to the Committee's goals and priorities. In order to meet the federally mandated requirements for early childhood advisory councils, the chairman may establish and appoint additional members to advisory subcommittees to address areas of special concern and priority.

J. The Department of Education and the Department of Social Services shall provide staff support to the Committee. All agencies of the Commonwealth shall provide assistance to the Committee, upon request.

2016, c. 652.

§§ 2.2-209, 2.2-210. Repealed

Repealed by Acts 2004, c. 37.

Article 5 - SECRETARY OF FINANCE

§ 2.2-211. Position established; agencies for which responsible; additional powers

A. The position of Secretary of Finance (the Secretary) is created. The Secretary shall be responsible for the following agencies: Department of Accounts, Department of Planning and Budget, Department of Taxation, and Department of the Treasury. The Governor, by executive order, may assign any other state executive agency to the Secretary of Finance, or reassign any agency listed.

B. To the greatest extent practicable, the agencies assigned to the Secretary shall pay all amounts due and owing by the Commonwealth through electronic transfers of funds from the general fund or appropriate special fund to the bank account of the payee or a party identified by law to receive funds on behalf of the payee. All wire transfer costs associated with the electronic transfer shall be paid by the payee subject to exemptions authorized by the State Treasurer affecting the investment, debt, and intergovernmental transactions of the Commonwealth and its agencies, institutions, boards, and authorities.

1984, c. 720, §§ 2.1-51.32, 2.1-51.33, 2.1-51.34; 1985, c. 72; 1996, c. 500; 2001, c. 844; 2011, cc. 798, 871.

Article 6 - SECRETARY OF HEALTH AND HUMAN RESOURCES

§ 2.2-212. Position established; agencies for which responsible; additional powers

The position of Secretary of Health and Human Resources (the Secretary) is created. The Secretary of Health and Human Resources shall be responsible to the Governor for the following agencies: Department of Health, Department for the Blind and Vision Impaired, Department of Health Professions, Department of Behavioral Health and Developmental Services, Department for Aging and Rehabilitative Services, Department of Social Services, Department of Medical Assistance Services, Virginia Department for the Deaf and Hard-of-Hearing, the Office of Children's Services, and the Assistive Technology Loan Fund Authority. The Governor may, by executive order, assign any other state executive agency to the Secretary of Health and Human Resources, or reassign any agency listed above to another Secretary.

Unless the Governor expressly reserves such power to himself, the Secretary shall (i) serve as the lead Secretary for the coordination and implementation of the long-term care policies of the Commonwealth and for the blueprint for livable communities 2025 throughout the Commonwealth, working with the Secretaries of Transportation, Commerce and Trade, and Education, and the Commissioner of Insurance, to facilitate interagency service development and implementation, communication and cooperation, (ii) serve as the lead Secretary for the Children's Services Act, working with the Secretary of Education and the Secretary of Public Safety and Homeland Security to facilitate interagency service development and implementation, communication and cooperation, and (iii) coordinate the disease prevention activities of agencies in the Secretariat to ensure efficient, effective delivery of health related services and financing.

1976, c. 729, §§ 2.1-51.13, 2.1-51.14, 2.1-51.15; 1978, c. 635; 1982, cc. 345, 459; 1983, c. 20; 1984, cc. 720, 781; 1985, cc. 447, 448; 1987, cc. 219, 698; 1988, cc. 646, 765; 1989, cc. 614, 695; 1990, c. 458; 1991, c. 563; 1994, c. 755; 1996, cc. 492, 902; 1998, c. 793; 2000, c. 937; 2001, cc. 577, 844; 2004, cc. 14, 142; 2006, cc. 344, 380; 2007, cc. 10, 399, 534, 581; 2009, cc. 813, 840; 2010, cc. 411, 801; 2012, cc. 803, 835; 2014, cc. 115, 490; 2015, c. 366.

§ 2.2-213. Secretary of Health and Human Resources to develop certain criteria

In order to respond to the needs of substance abusing women and their children, the Secretary shall develop criteria for (i) enhancing access to publicly funded substance abuse treatment programs in order to effectively serve pregnant substance abusers; (ii) determining when a drug-exposed child may be referred to the early intervention services and tracking system available through Part C of the Individuals with Disabilities Education Act, 20 U.S.C. § 1431 et seq.; (iii) determining the appropriate circumstances for contact between hospital discharge planners and local departments of social services for referrals for family-oriented prevention services, when such services are available and provided by the local social services agency; and (iv) determining when the parent of a drug-exposed infant, who may be endangering a child's health by failing to follow a discharge plan, may be referred to the child protective services unit of a local department of social services.

The Secretary shall consult with the Commissioner of Behavioral Health and Developmental Services, the Commissioner of Social Services, the Commissioner of Health, community services boards, behavioral health authorities, local departments of social services, and local departments of health in developing the criteria required by this section.

1992, c. 428, § 2.1-51.15:1; 2001, c. 844; 2009, cc. 813, 840.

§ 2.2-213.1. Secretary of Health and Human Resources and Commissioner of Insurance to develop long-term care public information campaign

A. In order to respond to the burgeoning population of seniors in the Commonwealth, the Secretary of Health and Human Resources and the Commissioner of Insurance shall develop a public information campaign to inform the citizens of the Commonwealth of (i) the impending crisis in long-term care, (ii) the effect of the impending crisis on the Virginia Medicaid program and on the finances of families and their estates, (iii) innovative alternatives and combinations of institutional and community-based long-term care services, and (iv) the requirements for long-term care insurance certificates and policies and the meaning of terminology used in such certificates and policies.

B. The Secretary of Health and Human Resources and the Commissioner of Insurance shall enlist the assistance of the Board of Health and the Commissioner of Health, in the exercise of their responsibilities set forth in Title 32.1 to protect, implement, and preserve the public health, in disseminating the information concerning long-term care to the public.

2005, c. 92.

§ 2.2-213.2. Secretary to coordinate system for children with incarcerated parents

The Secretary of Health and Human Resources, in consultation with the Secretary of Public Safety and Homeland Security, shall establish an integrated system for coordinating the planning and provision of services for children with incarcerated parents among state, local, nonprofit agencies, and faith-based organizations in order to provide such children with services needed to continue parental relationships with the incarcerated parent, where appropriate, and encourage healthy relationships in the family and community.

2006, c. 366; 2014, cc. 115, 490.

§ 2.2-213.3. Secretary to coordinate electronic prescribing clearinghouse

A. In order to promote the implementation of electronic prescribing by health practitioners, health care facilities, and pharmacies in order to prevent prescription drug abuse, improve patient safety, and reduce unnecessary prescriptions, the Secretary of Health and Human Resources, in consultation with the Secretary of Technology, shall establish a website with information on electronic prescribing for health practitioners. The website shall contain (i) information concerning the process and advantages of electronic prescribing, including using medical history data to prevent drug interactions, prevent allergic reactions, and deter abuse of controlled substances; (ii) information regarding the availability of electronic prescribing products, including no-cost or low-cost products; (iii) links to federal and private-sector websites that provide guidance on selecting electronic prescribing products; and (iv) links to state, federal, and private-sector incentive programs for the implementation of electronic prescribing.

B. The Secretary of Health and Human Resources, in consultation with the Secretary of Technology, shall regularly consult with relevant public and private stakeholders to assess and accelerate the implementation of electronic prescribing in Virginia. For purposes of this section, relevant stakeholders include, but are not limited to, organizations that represent health practitioners, organizations that represent health care facilities, organizations that represent pharmacies, organizations that operate electronic prescribing networks, organizations that create electronic prescribing products, and regional health information organizations.

2009, c. 479.

§ 2.2-213.4. Secretary of Health and Human Resources to develop blueprint for long-term services and supports

The Secretary shall convene, as appropriate, such other heads of executive branch secretariats, state agencies and other public and private agencies and entities to develop a blueprint for livable communities and long-term services and supports for older Virginians and people with disabilities. The blueprint shall include planning through the year 2025 and shall be comprehensive and inclusive of issues related to active, daily life in communities across the Commonwealth. The blueprint shall build upon existing plans and reports and shall focus on (i) community integration and involvement, (ii) availability and accessibility of services and supports, and (iii) integration and participation in the economic mainstream. The blueprint shall be submitted to the Governor

and Chairs of the Appropriations Committee of the House of Delegates and the Finance Committee of the Senate no later than June 30, 2011.

2010, cc. 411, 801.

§ 2.2-213.5. Dissemination of information about specialized training to prevent and minimize mental health crisis

The Secretary of Health and Human Resources and the Secretary of Public Safety and Homeland Security shall encourage the dissemination of information about specialized training in evidence-based strategies to prevent and minimize mental health crises in all jurisdictions. This information shall be disseminated to, but not limited to, law-enforcement personnel, other first responders, hospital emergency department personnel, school personnel, and other interested parties, to the extent possible. These strategies shall include (i) crisis intervention team (CIT) training for law-enforcement personnel and other first responders as designated by the community CIT task force and (ii) mental health first aid training for other first responders, hospital emergency department personnel, school personnel, and other interested parties. The Secretary of Health and Human Resources and the Secretary of Public Safety and Homeland Security shall encourage adherence to the models of training and achievement of programmatic goals and standards. The goals for CIT training shall include (i) training participants to recognize the signs and symptoms of behavioral health disorders; (ii) teaching participants the skills necessary to de-escalate crisis situations and how to support individuals in crisis; (iii) educating participants about community-based resources available to individuals in crisis; and (iv) enhancing participants' ability to communicate with health systems about the nature of the crisis to include rules regarding confidentiality and protected health information. The goals for mental health first aid training shall be to teach the public (to include first responders, school personnel, and other interested parties) how to recognize symptoms of mental health problems, how to offer and provide initial help, and how to guide a person toward appropriate treatments and other supportive help.

2014, c. 601.

§ 2.2-214. Responsibility of certain agencies within the Secretariat; review of regulations

The Boards of Health, Behavioral Health and Developmental Services, Social Services, and Medical Assistance Services and the Department for Aging and Rehabilitative Services shall review their regulations and policies related to service delivery in order to ascertain and eliminate any discrimination against individuals infected with human immunodeficiency virus.

1989, c. 613, § 2.1-51.14:1; 1992, c. 755; 2001, c. 844; 2009, cc. 813, 840; 2012, cc. 803, 835.

§ 2.2-214.1. Healthy Lives Prescription Fund; nonreverting; purposes; report

A. There is hereby created in the Department of the Treasury a special nonreverting fund that shall be known as the Healthy Lives Prescription Fund.

B. The Fund shall be established on the books of the Comptroller. The Fund shall consist of such moneys appropriated by the General Assembly and any funds available from the federal

government, donations, grants, and in-kind contributions made to the Fund for the purposes stated herein. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

C. Moneys in the Fund shall be available to develop and implement programs that will enhance current prescription drug programs for citizens of the Commonwealth who are without insurance or ability to pay for prescription drugs and to develop innovative programs to make such prescription drugs more available.

D. The Secretary shall provide an annual report on the status of the Fund and efforts to meet the goals of the Fund.

2003, cc. 661, 674.

Article 7 - SECRETARY OF NATURAL RESOURCES

§ 2.2-215. Position established; agencies for which responsible

The position of Secretary of Natural Resources (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Conservation and Recreation, Department of Historic Resources, Marine Resources Commission, Department of Game and Inland Fisheries, Virginia Museum of Natural History, and the Department of Environmental Quality. The Governor may, by executive order, assign any state executive agency to the Secretary of Natural Resources, or reassign any agency listed in this section to another Secretary.

1972, c. 641, §§ 2.1-51.7, 2.1-51.9; 1974, cc. 44, 45, 354, 420; 1975, c. 390; 1976, cc. 729, 732, 733, 734, 743, 767; 1978, c. 32; 1979, c. 294; 1982, c. 459; 1984, cc. 590, 720, 739, 750; 1985, cc. 193, 447, 448; 1986, cc. 335, 492, 567, 492; 1988, cc. 608, 707, 891; 1989, c. 656; 1992, c. 887; 2001, c. 844; 2004, c. 142; 2005, c. 41; 2012, cc. 803, 835.

§ 2.2-216. Coordination of water quality information; monitoring the quality of the waters, habitat, and living resources of Chesapeake Bay and its tributaries

The Secretary shall:

1. Serve as the lead Secretary for the coordination of technical assistance, information, and training to ensure that consistent water quality information is provided to all citizens of the Commonwealth; and

2. Consult with the Secretary of Agriculture and Forestry and the Secretary of Health and Human Resources and cooperate with appropriate state and federal agencies in the development and implementation of a comprehensive program to monitor the quality of the waters, habitat, and the living resources of the Chesapeake Bay and its tributaries.

1984, c. 183, § 2.1-51.8:2; 1986, c. 492; 2001, c. 844; 2004, c. 58; 2008, c. 368.

§ 2.2-217. Friend of the Bay Award

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

1994, c. 392, § 2.1-51.8:3; 2001, c. 844.

§ 2.2-218. Development of Watershed Implementation Plans to restore the water quality and living resources of the Chesapeake Bay and its tributaries

The Secretary shall coordinate the development of Watershed Implementation Plans (WIPs) pursuant to the total maximum daily load (TMDL) for the Chesapeake Bay released by the U.S. Environmental Protection Agency in December 2010 and amendment thereto. The WIPs shall be designed to improve water quality and restore the living resources of the Chesapeake Bay and its tributaries. The WIPs shall be developed in consultation with affected stakeholders, including local government officials; wastewater treatment operators; seafood industry representatives; commercial and recreational fishing interests; developers; farmers; local, regional and statewide conservation and environmental interests; and the Virginia delegation to the Chesapeake Bay Commission.

1996, c. 1031, § 2.1-51.12:1; 1999, c. 548; 2001, c. 844; 2003, c. 885; 2015, c. 380.

§ 2.2-219. Repealed

Repealed by Acts 2016, c. 120, cl. 1.

§ 2.2-220. Repealed

Repealed by Acts 2015, c. 48, cl. 1.

§ 2.2-220.1. Chesapeake Bay Watershed Agreement; annual report

By November 1 of each year, the Secretary of Natural Resources shall report to the Governor and the Chairs of the House Committee on Agriculture, Chesapeake and Natural Resources and the Senate Committee on Agriculture, Conservation and Natural Resources on the implementation of the 2014 Chesapeake Bay Watershed Agreement. The Secretary may use documents, reports, and other materials developed in cooperation with other signatories to the agreement, including the U.S. Environmental Protection Agency and other relevant federal agencies or nongovernmental organizations, to fulfill this reporting requirement.

2001, c. 259, § 2.1-51.12:4; 2015, c. 475.

§ 2.2-220.2. Development of strategies to prevent the introduction of, to control, and to eradicate invasive species

A. The Secretaries of Natural Resources and Agriculture and Forestry shall coordinate the development of strategic actions to be taken by the Commonwealth, individual state and federal agencies, private businesses, and landowners related to invasive species prevention, early detection

and rapid response, control and management, research and risk assessment, and education and outreach. Such strategic actions shall include the development of a state invasive species management plan. The plan shall include a list of invasive species that pose the greatest threat to the Commonwealth. The primary purposes of the plan shall be to address the rising cost of invasive species, to improve coordination among state and federal agencies' efforts regarding invasive species prevention and management and information exchange, and to educate the public on related matters. The Secretaries of Natural Resources and Agriculture and Forestry shall update the state invasive species management plan at least once every four years. The Department of Conservation and Recreation shall provide staff support.

B. The Secretary of Natural Resources shall establish and serve as chair of an advisory group to develop an invasive species management plan and shall coordinate and implement recommendations of that plan. Other members of the advisory group shall include the Departments of Conservation and Recreation, Game and Inland Fisheries, Environmental Quality, Forestry, Agriculture and Consumer Services, Health, and Transportation; the Marine Resources Commission; the Virginia Cooperative Extension; the Virginia Institute of Marine Science; representatives of the agriculture and forestry industries; the conservation community; interested federal agencies; academic institutions; and commercial interests. The Secretary of Agriculture and Forestry shall serve as the vice-chair of the advisory group. The advisory group shall meet at least twice per year and shall utilize ad hoc committees as necessary with special emphasis on working with affected industries, landowners, and citizens, and shall assist the Secretary to:

1. Prevent additional introductions of invasive species to the lands and waters of the Commonwealth;

2. Procure, use, and maintain native species to replace invasive species;

3. Implement targeted control efforts on those invasive species that are present in the Commonwealth but are susceptible to such management actions;

4. Identify and report the appearance of invasive species before they can become established and control becomes less feasible;

5. Implement immediate control measures if a new invasive species is introduced in Virginia, with the aim of eradicating that species from Virginia's lands and waters if feasible given the degree of infestation; and

6. Recommend legislative actions or pursue federal grants to implement the plan.

C. As used in this section, "invasive species" means a species, including its seeds, eggs, spores or other biological material capable of propagating that species, that is not native to the ecosystem and whose introduction causes or is likely to cause economic or environmental harm or harm to human health; however, this definition shall not include (i) any agricultural crop generally recognized by the United States Department of Agriculture or the Virginia Department of Agriculture

and Consumer Services as suitable to be grown in the Commonwealth, or (ii) any aquacultural organism recognized by the Marine Resources Commission or the Department of Game and Inland Fisheries as suitable to be propagated in the Commonwealth.

Nothing in this section shall affect the authorities of any agency represented on the advisory group with respect to invasive species.

2009, cc. 144, 619.

§ 2.2-220.3. Development of strategies to collect land use and conservation information

The Secretary of Natural Resources, with assistance from the Secretary of Agriculture and Forestry, shall establish and maintain a database of the critical data attributes for onsite best management practices implemented in the Commonwealth that limit the amount of nutrients and sediment entering state waters. The database shall document voluntary actions taken by the agricultural and silvicultural sectors and should enable the application of the collected data towards projections of progress towards Virginia's water quality goals by sharing the data with the appropriate federal or state agencies. To the extent possible or appropriate, the database shall (i) be uniform in content and format to applications in the other states of the Chesapeake Bay watershed, (ii) maintain the confidentiality of information, and (iii) use existing methods of data collection including reports to the U.S. Department of Agriculture's Farm Service Agency, soil and water conservation districts, and localities for the purpose of land use valuation. Any information collected pursuant to this section shall be exempt from the Freedom of Information Act (§ 2.2-3700 et seq.).

2010, c. 172.

Article 8 - SECRETARY OF PUBLIC SAFETY AND HOMELAND SECURITY

§ 2.2-221. Position established; agencies for which responsible; additional powers and duties

A. (Effective until July 1, 2018) The position of Secretary of Public Safety and Homeland Security (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Alcoholic Beverage Control, Department of Corrections, Department of Juvenile Justice, Department of Criminal Justice Services, Department of Forensic Science, Virginia Parole Board, Department of Emergency Management, Department of Military Affairs, Department of State Police, Department of Fire Programs, and the Commonwealth's Attorneys' Services Council. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

A. (Effective July 1, 2018) The position of Secretary of Public Safety and Homeland Security (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: the Virginia Alcoholic Beverage Control Authority, Department of Corrections, Department of Juvenile Justice, Department of Criminal Justice Services, Department of Forensic Science, Virginia Parole Board, Department of Emergency Management, Department of Military Affairs, Department of State Police, Department of Fire Programs, and Commonwealth's Attorneys' Services Council.

The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

B. The Secretary shall by reason of professional background have knowledge of military affairs, law enforcement, public safety, or emergency management and preparedness issues, in addition to familiarity with the structure and operations of the federal government and of the Commonwealth.

Unless the Governor expressly reserves such power to himself, the Secretary shall:

1. Work with and through others, including federal, state, and local officials as well as the private sector, to develop a seamless, coordinated security and preparedness strategy and implementation plan.

2. Serve as the point of contact with the federal Department of Homeland Security.

3. Provide oversight, coordination, and review of all disaster, emergency management, and terrorism management plans for the state and its agencies in coordination with the Virginia Department of Emergency Management and other applicable state agencies.

4. Work with federal officials to obtain additional federal resources and coordinate policy development and information exchange.

5. Work with and through appropriate members of the Governor's Cabinet to coordinate working relationships between state agencies and take all actions necessary to ensure that available federal and state resources are directed toward safeguarding Virginia and its citizens.

6. Designate a Commonwealth Interoperability Coordinator to ensure that all communications-related preparedness federal grant requests from state agencies and localities are used to enhance interoperability. The Secretary shall ensure that the annual review and update of the statewide interoperability strategic plan is conducted as required in § 2.2-222.2. The Commonwealth Interoperability Coordinator shall establish an advisory group consisting of representatives of state and local government and constitutional offices, broadly distributed across the Commonwealth, who are actively engaged in activities and functions related to communications interoperability.

7. Serve as one of the Governor's representatives on regional efforts to develop a coordinated security and preparedness strategy, including the National Capital Region Senior Policy Group organized as part of the federal Urban Areas Security Initiative.

8. Serve as a direct liaison between the Governor and local governments and first responders on issues of emergency prevention, preparedness, response, and recovery.

9. Educate the public on homeland security and overall preparedness issues in coordination with applicable state agencies.

10. Serve as chairman of the Secure Commonwealth Panel.

11. Encourage homeland security volunteer efforts throughout the state.

12. Coordinate the development of an allocation formula for State Homeland Security Grant Program funds to localities and state agencies in compliance with federal grant guidance and constraints. The formula shall be, to the extent permissible under federal constraints, based on actual risk, threat, and need.

13. Work with the appropriate state agencies to ensure that regional working groups are meeting regularly and focusing on regional initiatives in training, equipment, and strategy to ensure ready access to response teams in times of emergency and facilitate testing and training exercises for emergencies and mass casualty preparedness.

14. Provide oversight and review of the Virginia Department of Emergency Management's annual statewide assessment of local and regional capabilities, including equipment, training, personnel, response times, and other factors.

15. Employ, as needed, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary, and fix their compensation to be payable from funds made available for that purpose.

16. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, real property, or personal property for the benefit of the Commonwealth, and receive and accept from the Commonwealth or any state, any municipality, county, or other political subdivision thereof, or any other source, aid or contributions of money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made.

17. Receive and accept from any source aid, grants, and contributions of money, property, labor, or other things of value to be held, used, and applied to carry out these requirements subject to the conditions upon which the aid, grants, or contributions are made.

18. Make grants to local governments, state and federal agencies, and private entities with any funds of the Secretary available for such purpose.

19. (Effective July 1, 2018) Provide oversight and review of the law-enforcement operations of the Alcoholic Beverage Control Authority.

20. Take any actions necessary or convenient to the exercise of the powers granted or reasonably implied to this Secretary and not otherwise inconsistent with the law of the Commonwealth.

1976, c. 732, §§ 2.1-51.16, 2.1-51.18; 1978, cc. 455, 606, 607, 820; 1984, cc. 720, 779; 1985, cc. 447, 448; 1986, c. 60; 1988, cc. 67, 173, 888; 1989, c. 733; 1990, cc. 1, 317; 1992, c. 81; 1996, c. 503; 2001, c. 844; 2006, cc. 150, 326; 2011, cc. 780, 858; 2012, cc. 803, 835; 2014, cc. 115, 490; 2015, cc. 38, 730.

§ 2.2-221.1. Secretary to coordinate system for offender transition and reentry services

The Secretary of Public Safety and Homeland Security shall establish an integrated system for coordinating the planning and provision of offender transitional and reentry services among and between state, local, and nonprofit agencies in order to prepare inmates for successful transition into their communities upon release from incarceration and for improving opportunities for treatment, employment, and housing while on subsequent probation, parole, or post-release supervision.

It is the intent of the General Assembly that funds used for the purposes of this section be leveraged to the fullest extent possible and that direct transitional and reentry employment and housing assistance for offenders be provided in the most cost effective means possible, including through agreements with local nonprofit pre- and post-release service organizations.

2005, c. 153; 2014, cc. 115, 490.

§ 2.2-222. Secretary to provide annual reports on juvenile offenders

The Secretary shall provide annual reports to the Governor and the General Assembly on juvenile offender demographics by offense, age, committing court, previous court contacts of offenders, and, beginning in July 1998, recidivism rates of juveniles committed to agencies within the Secretariat. The annual report shall also include summaries of any juvenile program evaluations completed in the previous year on programs operated by the Departments of Juvenile Justice, Corrections or Criminal Justice Services and whose evaluation was directed by the General Assembly or the Secretary.

1976, c. 732, § 2.1-51.17; 1984, c. 720; 1990, cc. 1, 317; 1996, c. 617; 2001, c. 844.

§ 2.2-222.1. Secretary to oversee and monitor the development, maintenance, and implementation of a comprehensive and measureable homeland security strategy for the Commonwealth

A. The Secretary shall ensure that, consistent with the National Incident Management System (NIMS), the Commonwealth implements a continuous cycle of planning, organizing, training, equipping, exercising, evaluating, and taking corrective action pursuant to securing the Commonwealth at both the state and local level against man-made and natural disasters. To that end, the Secretary shall take action to assign responsibility among agencies, jurisdictions, and subdivisions of the Commonwealth to effect the highest state of readiness posed by both man-made and natural disasters. In doing so, the Secretary shall ensure that preparedness initiatives will be effectively and efficiently coordinated, implemented, and monitored.

B. The Secretary shall also oversee and monitor the development, maintenance, and implementation of a comprehensive and measurable homeland security strategy for the Commonwealth. To ensure a comprehensive strategy, the Secretary shall coordinate the homeland security strategy with all state and local, public and private, councils that have a homeland security focus within the Commonwealth. The strategy shall ensure that the Commonwealth's homeland security programs are resourced, executed, and assessed according to well-defined and relevant

Commonwealth homeland security requirements. In support of the strategy, the Secretary shall provide oversight of the designated State Administrative Agency (SAA) for homeland security to ensure that applications for grant funds by state agencies or local governments describe well-defined requirements for planning, organizing, training, equipping, exercising, evaluating, and taking corrective action measures essential to Commonwealth security.

C. The Secretary shall ensure that the homeland security strategy is fully incorporated into the Secure Commonwealth Plan. In the development of the Secure Commonwealth Plan, the Secretary shall (i) designate a state proponent for each goal in the Secure Commonwealth Plan required within the Commonwealth homeland security strategy; (ii) identify which state agencies shall have responsibility for prevention, protection, mitigation, response, and recovery requirements associated with each goal in the Secure Commonwealth Plan; (iii) prescribe metrics to those state agencies to quantify readiness for man-made and natural disasters; (iv) ensure that state agencies follow rigorous planning practices; and (v) conduct annual reviews and updates to ensure planning, organizing, training, equipping, exercising, evaluating, and taking corrective action is fully implemented at state and local levels of government.

D. The Secretary shall develop annually the Commonwealth Threat Hazard Identification and Risk Assessment (C-THIRA) Report to identify threats and hazards and determine capability targets and resource requirements necessary to address anticipated and unanticipated risks to state and local preparedness. The C-THIRA Report shall (i) identify a list of the threats and hazards of primary concern to the Commonwealth; (ii) describe the threats and hazards of concern, showing how they may affect the Commonwealth; (iii) assess each threat and hazard in context to develop a specific capability target for each core capability consistent with federal National Preparedness Goals; and (iv) estimate the resources required to achieve the capability targets through the use of community assets and mutual aid, while also considering preparedness activities, including mitigation opportunities. Additionally, the C-THIRA Report shall assess the Commonwealth's state of planning, organizing, training, equipping, exercising, evaluating, and ability to take corrective action as well as any shortfalls in these areas. The C-THIRA Report shall also serve as the Commonwealth's strategic approach to improving future preparedness and shall be delivered to the Chairmen of the Senate Committees on Finance and for Courts of Justice and the Chairmen of the House Committees on Appropriations and Militia, Police and Public Safety no later than November 1 of each year.

E. The Secretary shall ensure that state agencies develop and maintain rigorously developed response plans in support of the Commonwealth of Virginia Emergency Operations Plan (COVEOP). The Secretary shall designate the Virginia Department of Emergency Management (VDEM) as the primary agent to ensure that state agencies are compliant with the COVEOP. The Secretary shall further require that VDEM ensure the development of state agency and local disaster response plans and procedures, and monitor the status and quality of those plans on a cyclical basis to establish that they are feasible and suitable and can be implemented with available resources.

F. The Secretary shall be responsible for the coordination and development of state and local shelter, evacuation, traffic, and refuge of last resort planning. The Secretary shall ensure that jurisdictions and subdivisions of the Commonwealth have adequate shelter, evacuation, traffic, and refuge of last resort plans to support emergency evacuation in the event of a man-made or natural disaster. To that end, the Secretary shall direct VDEM to monitor, review, and evaluate on a cyclical basis all shelter, evacuation, traffic, and refuge of last resort plans to ensure they are feasible and suitable and can be implemented with available resources.

G. The Secretary shall also ensure that plans for protecting public critical infrastructure are both developed and fully implemented by those state agencies, jurisdictions, and subdivisions of the Commonwealth with responsibility for critical infrastructure protection. The Secretary shall report deficiencies in securing critical infrastructure annually as part of the Commonwealth's C-THIRA Report.

H. The Secretary is authorized, consistent with federal and state law and procurement regulations thereof, to contract for private and public sector services in homeland security and emergency management to enable, enhance, augment, or supplement state and local planning, organizing, training, equipping, exercising, evaluating, and corrective action capability as he deems necessary to meet Commonwealth security goals with such funds as may be made available to the Secretary or the Department of Emergency Management annually for such services.

2014, cc. 115, 490.

§ 2.2-222.2. Additional duties related to review of statewide interoperability strategic plan; state and local compliance

The Secretary through the Commonwealth Interoperability Coordinator shall ensure that the annual review and update of the statewide interoperability strategic plan is accomplished and implemented to achieve effective and efficient communication between state, local, and federal communications systems.

All state agencies and localities shall achieve consistency with and support the goals of the statewide interoperability strategic plan by July 1, 2015, in order to remain eligible to receive state or federal funds for communications programs and systems.

2014, cc. 115, 490.

§ 2.2-222.3. Secure Commonwealth Panel; membership; duties; compensation; staff

A. The Secure Commonwealth Panel (the Panel) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The Panel shall consist of 34 members as follows: three members of the House of Delegates and two nonlegislative citizens to be appointed by the Speaker of the House of Delegates; three members of the Senate of Virginia and two nonlegislative citizens to be appointed by the Senate Committee on Rules; the Lieutenant Governor; the Attorney General; the Executive Secretary of the Supreme Court of Virginia; the Secretaries of Commerce and Trade, Health and Human Resources, Technology,

Transportation, Public Safety and Homeland Security, and Veterans and Defense Affairs, or their designees; two local first responders; three local government representatives; two physicians with knowledge of public health; four members from the business or industry sector; and four citizens from the Commonwealth at large. Except for appointments made by the Speaker of the House of Delegates and the Senate Committee on Rules, all appointments shall be made by the Governor. Additional ex officio members may be appointed to the Panel by the Governor. Legislative members shall serve terms coincident with their terms of office or until their successors shall qualify. Nonlegislative citizen members shall serve for terms of four years. The Secretary of Public Safety and Homeland Security shall be the chairman of the Panel.

B. The Panel shall monitor and assess the implementation of statewide prevention, preparedness, response, and recovery initiatives and where necessary review, evaluate, and make recommendations relating to the emergency preparedness of government at all levels in the Commonwealth. The Panel shall make annual reports to the Governor concerning the state's emergency preparedness, response, recovery, and prevention efforts.

C. Members of the Panel shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825.

D. Staff support for the Panel and funding for the costs of expenses of the members shall be provided by the Secretary of Public Safety and Homeland Security.

E. The Secretary shall facilitate cabinet-level coordination among the various agencies of state government related to emergency preparedness and shall facilitate private sector preparedness and communication.

2014, cc. 115, 490; 2016, cc. 200, 216.

§ 2.2-223. Repealed

Repealed by Acts 2012, cc. 164 and 456, cl. 2.

§ 2.2-224. Secretary of Public Safety and Homeland Security to publish certain list

The Secretary shall publish annually a list of those localities that have acquired any aircraft through forfeiture procedures. The list shall include a description of each aircraft so acquired. The Secretary shall develop a program to encourage the use of such aircraft for travel associated with law-enforcement purposes, including but not limited to, extradition of prisoners and arrestees within and without the Commonwealth.

1995, c. 464, § 2.1-51.17:01; 2001, c. 844.

§ 2.2-224.1. Secretary of Public Safety and Homeland Security to establish information exchange program

A. The Secretary shall establish a public safety information exchange program with those states that share a border with Canada or Mexico and are willing to participate in the exchange. The purpose of the information exchange shall be to share criminal information and, when authorized by

the proper authority, intelligence information to address threats posed within the Commonwealth by (i) the organization or operation of criminal enterprises by transnational gangs; (ii) the production, transportation, distribution, or use of illegal drugs, firearms, or explosives; (iii) the activities of international or domestic terror organizations, agents, or sponsors thereof; and (iv) the criminal repercussions that result from the presence in the Commonwealth of persons or organizations illegally present in the United States.

B. The public safety information exchange program shall be administered by the Secretary and other state and local agencies designated by the Secretary.

C. The Secretary shall seek the cooperation of the U.S. Department of Homeland Security, the U.S. Department of Justice, the Federal Bureau of Investigation, the U.S. Immigration and Customs Enforcement, or any such successor agencies, and any other federal intelligence organizations as necessary, in order to facilitate the sharing of state and federal information and intelligence among the states participating in the exchange program.

2011, c. 503.

Article 9 - SECRETARY OF TECHNOLOGY

§ 2.2-225. Position established; agencies for which responsible; additional powers

The position of Secretary of Technology (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies, councils, and boards: Information Technology Advisory Council, Innovation and Entrepreneurship Investment Authority, Virginia Information Technologies Agency, Virginia Geographic Information Network Advisory Board, and the 9-1-1 Services Board. The Governor, by executive order, may assign any other state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

Unless the Governor expressly reserves such power to himself, the Secretary may, with regard to strategy development, planning and budgeting for technology programs in the Commonwealth:

1. Monitor trends and advances in fundamental technologies of interest and importance to the economy of the Commonwealth and direct and approve a stakeholder-driven technology strategy development process that results in a comprehensive and coordinated view of research and development goals for industry, academia and government in the Commonwealth. This strategy shall be updated biennially and submitted to the Governor, the Speaker of the House of Delegates and the President Pro Tempore of the Senate.

2. Work closely with the appropriate federal research and development agencies and program managers to maximize the participation of Commonwealth industries and universities in these programs consistent with agreed strategy goals.

3. Direct the development of plans and programs for strengthening the technology resources of the Commonwealth's high technology industry sectors and for assisting in the strengthening and development of the Commonwealth's Regional Technology Councils.

4. Direct the development of plans and programs for improving access to capital for technology-based entrepreneurs.

5. Assist the Joint Commission on Technology and Science created pursuant to § 30-85 in its efforts to stimulate, encourage, and promote the development of technology in the Commonwealth.

6. Continuously monitor and analyze the technology investments and strategic initiatives of other states to ensure the Commonwealth remains competitive.

7. Strengthen interstate and international partnerships and relationships in the public and private sectors to bolster the Commonwealth's reputation as a global technology center.

8. Develop and implement strategies to accelerate and expand the commercialization of intellectual property created within the Commonwealth.

9. Ensure the Commonwealth remains competitive in cultivating and expanding growth industries, including life sciences, advanced materials and nanotechnology, biotechnology, and aerospace.

10. Monitor the trends in the availability and deployment of and access to broadband communications services, which include, but are not limited to, competitively priced, high-speed data services and Internet access services of general application, throughout the Commonwealth and advancements in communications technology for deployment potential. The Secretary shall report annually by December 1 to the Governor and General Assembly on those trends.

11. Designate specific projects as enterprise information technology projects, prioritize the implementation of enterprise information technology projects, and establish enterprise oversight committees to provide ongoing oversight for enterprise information technology projects. At the discretion of the Governor, the Secretary shall designate a state agency or public institution of higher education as the business sponsor responsible for implementing an enterprise information technology project, and shall define the responsibilities of lead agencies that implement enterprise information technology projects. For purposes of this subdivision, "enterprise" means an organization with common or unifying business interests. An enterprise may be defined at the Commonwealth level or Secretariat level for programs and project integration within the Commonwealth, Secretariats, or multiple agencies.

12. Establish Internal Agency Oversight Committees and Secretariat Oversight Committees as necessary and in accordance with § 2.2-2021.

13. Review and approve the Commonwealth strategic plan for information technology, as developed and recommended by the Chief Information Officer pursuant to subdivision A 3 of § 2.2-2007.1.

14. Communicate regularly with the Governor and other Secretaries regarding issues related to the provision of information technology services in the Commonwealth, statewide technology ini-

tiatives, and investments and other efforts needed to achieve the Commonwealth's information technology strategic goals.

15. Provide consultation on guidelines, at the recommendation of the Innovation and Entrepreneurship Investment Authority, for the application, review, and award of funds from the Commonwealth Research Commercialization Fund pursuant to § 2.2-2233.1.

1999, cc. 412, 421, 433, §§ 2.1-51.44, 2.1-51.45, 2.1-51.46; 2001, c. 844; 2003, cc. 981, 1021; 2004, c. 989; 2009, cc. 325, 810; 2010, cc. 136, 145; 2011, cc. 138, 739; 2015, cc. 490, 768; 2016, cc. 296, 361.

§ 2.2-225.1. (Expires July 1, 2018) Office of Telework Promotion and Broadband Assistance

A. There is hereby established the Office of Telework Promotion and Broadband Assistance in the office of the Secretary of Technology, consisting of a director, appointed by the Secretary of Technology, and such additional telework and broadband professionals as deemed necessary. The goals of the Office are to encourage telework as a family-friendly, business-friendly public policy that promotes workplace efficiency and reduces strain on transportation infrastructure. In conjunction with efforts to promote telework, the Office shall work with public and private entities to develop widespread access to broadband services. It shall be the duty of the Director of the Office to advise the Secretary and the Board of Directors of the Innovation and Entrepreneurship Investment Authority, generally.

B. The Director shall have the following duties:

1. Promote and encourage use of telework alternatives for public and private employees, including but not limited to appropriate policy and legislative initiatives. Upon request, the Director may advise and assist private sector employers in the Commonwealth in planning, developing, and administering programs, projects, plans, policies, and other activities for telecommuting by private sector employees and in developing incentives provided by the private sector to encourage private sector employers in the Commonwealth to utilize employee telecommuting.

2. Advise and assist state agencies, and upon request of the localities, advise and assist localities in planning, developing, and administering programs, projects, plans, policies, and other activities to promote telecommuting by employees of state agencies or localities.

3. Support the efforts of both public and private entities within the Commonwealth to enhance or facilitate the deployment of, and access to competitively priced, advanced electronic communications services (commonly known as broadband) and Internet access services of general application throughout the Commonwealth.

4. Specifically work towards establishing affordable, accessible broadband services to unserved areas of the Commonwealth and monitor advancements in communication that will facilitate this goal.

5. Advocate for, and facilitate the development and deployment of, applications, programs, and services including, but not limited to telework, telemedicine, and e-learning that will bolster the usage of and demand for broadband level telecommunications.

6. Serve as a broadband information and applications clearinghouse for the Commonwealth and a coordination point for broadband-related services and programs in the Commonwealth.

7. Advise the Secretary on broadband adoption, deployment, and application issues.

8. Coordinate activities regarding telework with, and regularly report to, a panel consisting of the Secretaries of Administration, Commerce and Trade, Finance, Technology, and Transportation. The Secretary of Technology shall serve as chair of the panel. Additional members may be designated by the Governor. Staff support for the panel shall be provided by the offices of the Secretaries of Technology and Transportation and the Governor shall designate additional agencies to provide staff support as necessary.

9. The Director, under the direction of the Secretary of Technology and with the assistance of the Secretaries of Administration and Transportation, shall report annually to the General Assembly on telework participation levels and trends of both private and public sector employees in the Commonwealth.

C. The Office shall not have the power to consolidate or otherwise have authority over advanced communications projects being conducted by public or private bodies outside of the executive branch of government.

2008, c. 444; 2009, cc. 180, 325, 810.

§§ 2.2-226 through 2.2-227. Repealed
Repealed by Acts 2003, cc. 981 and 1021.

Article 10 - SECRETARY OF TRANSPORTATION

§ 2.2-228. Position established; agencies for which responsible
The position of Secretary of Transportation (the "Secretary") is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Transportation, Department of Rail and Public Transportation, Department of Aviation, Department of Motor Vehicles, the Virginia Port Authority, and the Motor Vehicle Dealer Board. The Governor, by executive order, may assign any state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

1990, cc. 1, 317, §§ 2.1-51.41, 2.1-51.43; 1992, c. 167; 1993, c. 757; 2001, c. 844.

§ 2.2-229. Office of Intermodal Planning and Investment of the Secretary of Transportation
There is hereby established the Office of Intermodal Planning and Investment of the Secretary of Transportation, consisting of a director, appointed by the Secretary of Transportation, and such additional transportation professionals as the Secretary of Transportation shall determine. The

goals of the Office are to provide solutions that link existing systems; promote the coordination of transportation investments and land use planning; reduce congestion; improve safety, mobility, and accessibility; and provide for greater travel options. It shall be the duty of the director of the office to advise the Secretary, the Virginia Aviation Board, the Virginia Port Authority Board, and the Commonwealth Transportation Board on intermodal issues, generally.

The responsibilities of the Office shall be:

1. To identify transportation solutions to promote economic development and all transportation modes, intermodal connectivity, environmental quality, accessibility for people and freight, and transportation safety;

2. To assist the Commonwealth Transportation Board in the development of the Statewide Transportation Plan pursuant to § 33.2-353;

3. To coordinate and oversee studies of potential highway, transit, rail, and other improvements or strategies, to help address mobility and accessibility within corridors of statewide significance and regional networks, and promote commuter choice inclusion in the six-year improvement program;

4. To work with and coordinate action of the Virginia Department of Transportation, the Virginia Department of Rail and Public Transportation, the Virginia Port Authority, and the Virginia Department of Aviation to promote intermodal and multimodal solutions in each agency's strategic and long-range plans;

5. To work with and review plans of regional transportation agencies and authorities to promote intermodal and multimodal solutions;

6. To work with and coordinate actions of the agencies of the transportation Secretariat to assess freight movements and promote intermodal and multimodal solutions to address freight needs, including assessment of intermodal facilities;

7. To assess and coordinate transportation safety needs related to passenger and freight movements by all transportation modes;

8. To coordinate the adequate accommodation of pedestrian, bicycle, and other forms of nonmotorized transportation in the six-year improvement program and other state and regional transportation plans;

9. To work with and coordinate actions of the agencies of the transportation Secretariat to implement a comprehensive, multimodal transportation policy;

10. To develop quantifiable and achievable goals pursuant to § 33.2-353 and transportation and land use performance measures and prepare an annual performance report on state and regional efforts. The Office of Intermodal Planning and Investment shall work with applicable regional organizations to develop such goals;

11. To identify and facilitate public and private partnerships to achieve the goals of state and regional plans;

12. To provide technical assistance to local governments and regional entities to establish and promote urban development areas pursuant to § 15.2-2223.1; and

13. To establish standards for the coordination of transportation investments and land use planning to promote commuter choice and transportation system efficiency.

2002, c. 361; 2006, c. 942; 2007, cc. 80, 219; 2009, cc. 670, 690.

Article 11 - SECRETARY OF VETERANS AND DEFENSE AFFAIRS

§ 2.2-230. Position established; agencies for which responsible; additional duties

The position of Secretary of Veterans and Defense Affairs (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies: Department of Veterans Services, Veterans Services Foundation, and Virginia Military Advisory Council. The Governor may, by executive order, assign any other state executive agency to the Secretary, or reassign any agency listed above to another Secretary.

The Secretary shall by reason of professional background have knowledge of veterans affairs and military affairs, in addition to familiarity with the structure and operations of the federal government and of the Commonwealth.

2011, cc. 780, 858; 2012, cc. 803, 835; 2014, cc. 115, 490.

§ 2.2-231. Powers and duties of the Secretary

Unless the Governor expressly reserves such power to himself, the Secretary shall:

1. Serve as the Governor's liaison for veterans affairs and provide active outreach to the U.S. Department of Veterans Affairs, the veterans service organizations, and the veterans community in Virginia to support and assist Virginia's veterans in identifying and obtaining the services, assistance, and support to which they are entitled.

2. Work with federal officials to obtain additional federal resources and coordinate veterans policy development and information exchange.

3. Work with and through appropriate members of the Governor's Cabinet to coordinate working relationships between state agencies and take all actions necessary to ensure that available federal and state resources are directed toward assisting veterans and addressing all issues of mutual concern to the Commonwealth and the armed forces of the United States, including quality of life issues unique to Virginia's active duty military personnel and their families, the quality of educational opportunities for military children, the future of federal impact aid, preparedness, public safety and security concerns, transportation needs, alcoholic beverage law enforcement, substance abuse, social service needs, possible expansion and growth of military facilities in the Com-

monwealth, and intergovernmental support agreements with state and local governments under the provisions of 10 U.S.C. § 2336.

4. Educate the public on veterans and defense issues in coordination with applicable state agencies.

5. Serve as chairman of the Virginia Military Advisory Council to establish a working relationship with Virginia's active duty military bases.

6. Monitor and enhance efforts to provide assistance and support for veterans living in Virginia and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service in the areas of (i) medical care, (ii) mental health and rehabilitative services, (iii) housing, (iv) homelessness prevention, (v) job creation, and (vi) education.

7. Seek additional federal resources to support veterans services.

8. Monitor efforts to provide services to veterans, those members of the Virginia National Guard, and Virginia residents in the Armed Forces Reserves who qualify for veteran status, and their immediate family members, including the dissemination of relevant materials and the rendering of technical or other advice.

9. Serve as the Governor's liaison and provide active outreach to localities of the Commonwealth and veterans support organizations in the development, implementation, and review of local veterans services programs as part of the state program.

10. Serve as the Governor's defense liaison and provide active outreach to the U.S. Department of Defense and the defense establishment in Virginia to support the military installations and activities in the Commonwealth to continue to enhance Virginia's current military-friendly environment, and foster and promote business, technology, transportation, education, economic development, and other efforts in support of the mission, execution, and transformation of the United States government military and national defense activities located in the Commonwealth.

11. Promote the industrial and economic development of localities included in or adjacent to United States government military and other national defense activities and those of the Commonwealth because the success of such activities depends on cooperation between the localities, the Commonwealth, and the United States military and national defense activities.

12. Provide technical assistance and coordination between the Commonwealth, its political subdivisions, and the United States government military and national defense activities located within the Commonwealth.

13. Employ, as needed, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary, and to fix their compensation to be payable from funds made available for that purpose.

14. Receive and accept from any federal or private agency, foundation, corporation, association, or person grants, donations of money, real property, or personal property for the benefit of the Commonwealth and receive and accept from the Commonwealth or any state, any municipality, county, or other political subdivision thereof, and from any other source, aid or contributions of money, property, or other things of value, to be held, used, and applied for the purposes for which such grants and contributions may be made.

15. Receive and accept from any source aid, grants, and contributions of money, property, labor, or other things of value to be held, used, and applied to carry out these requirements subject to the conditions upon which the aid, grants, or contributions are made.

16. Make grants to local governments, state and federal agencies, and private entities with any funds of the Secretary available for such purpose.

17. Take any actions necessary or convenient to the exercise of the powers granted or reasonably implied to this Secretary and not otherwise inconsistent with the law of the Commonwealth.

18. Work with veterans services organizations and counterparts in other states to monitor and encourage the timely and accurate processing of veterans benefit requests by the U.S. Department of Veterans Affairs, including requests for services connected to health care, mental health care, and disability payments.

19. In conjunction with subdivision 6, coordinate with federal, state, local, and private partners to assist homeless veterans in obtaining a state-issued identification card, in order to enable these veterans to access the available federal, state, local, and other resources they need to attain financial stability or address other issues that have adversely affected their lives.

2011, cc. 780, 858; 2013, c. 151; 2014, cc. 115, 490; 2016, c. 689.

§§ 2.2-232, 2.2-233. Repealed

Repealed by Acts 2014, c. 115, cl. 2, effective March 3, 2014, and c. 490, cl. 2, effective April 2, 2014.

Chapter 3 - ASSISTANT TO THE GOVERNOR FOR INTERGOVERNMENTAL AFFAIRS

§ 2.2-300. Assistant to the Governor for Intergovernmental Affairs; position created; appointment

A. There is created in the Office of the Governor, the position of Assistant to the Governor for Intergovernmental Affairs (the Assistant to the Governor) to serve as the link between the Commonwealth and the United States Congress; the White House; federal departments, agencies bureaus, offices and entities; and other states and territories.

B. The Assistant to the Governor for Intergovernmental Affairs shall be appointed by and serve at the pleasure of the Governor.

1978, c. 515, § 2.1-564; 1979, c. 429; 1981, c. 315; 1982, c. 421; 2001, c. 844; 2011, cc. 827, 867; 2013, cc. 231, 401.

§ 2.2-301. Duties of the Assistant to the Governor; staff; office location

A. The Assistant to the Governor shall be responsible for tasks assigned by law or by the Governor.

B. The Assistant to the Governor may hire staff and accept offers of service from volunteers on a full-time or part-time basis.

C. The Assistant to the Governor may obtain, either in the City of Washington, D.C., or at some location within the Commonwealth within 25 miles of Washington, D.C., such office space as he deems necessary for carrying out the duties imposed on him by this chapter.

1978, c. 515, §§ 2.1-565, 2.1-566; 1981, c. 315; 2001, c. 844; 2011, cc. 827, 867; 2013, cc. 231, 401.

§ 2.2-302. Responsibilities

It shall be the responsibility of the Assistant to the Governor, generally, to serve as an institutional and organizational link between the government of the Commonwealth and those agencies, bureaus, departments, offices, and entities of the United States government located in the City of Washington, D.C., and its immediate environs. The responsibilities of the Assistant to the Governor shall include, but not necessarily be limited to:

1. Monitoring, tracking, and conducting in-depth analyses of federal legislation and regulations that have a direct impact on the Commonwealth and providing the Governor, the appropriate Cabinet Secretaries, and state agencies with up-to-date information on the status of such federal legislation and regulations, including the potential impact on the Commonwealth and coordination of state positions on such legislation and regulations;

2. Influencing the development and outcome of federal legislation by keeping the Virginia Congressional Delegation informed about the Governor's priorities and the impact that such legislation will have on the management, the budget, and the citizens of the Commonwealth;

3. Providing advice regarding written or oral testimony to be presented by the Governor or state agency heads before Congressional committees;

4. Alerting state agencies to early opportunities for federal grants and working with the Department of Planning and Budget to monitor and track the status of federal grant applications submitted by state agencies;

5. Joining in cooperative efforts with other states, through other offices of intergovernmental affairs, governors associations, and interstate groups with which the Commonwealth has an affiliation, on issues of mutual concern;

6. Serving as an information source about the Commonwealth upon the request of (i) another state's governor's office or Congressional member's staff, (ii) the White House, (iii) a federal agency, or (iv) the embassy of a foreign country;

7. Assisting state agency officials in (i) resolving administrative problems that may occur between the state agency and federal agencies and (ii) obtaining needed information from the federal government;

8. Arranging meetings between federal and state officials; and

9. Reporting twice yearly to the members of the Senate Committee on Finance, the House Committee on Appropriations, and the Governor on all federal mandates and regulations that may have an effect on the Commonwealth. These reports shall be presented by January 31 and July 31 of each year and shall contain the recorded votes of each member of the Virginia Congressional Delegation for all such legislation.

1978, c. 515, § 2.1-567; 1981, c. 315; 1994, c. 479; 1997, c. 67; 2001, c. 844; 2011, cc. 827, 867; 2013, cc. 231, 401.

§ 2.2-302.1. Support for enactment of pooled purchasing of health insurance efforts
It is the public policy of the Commonwealth to support federal efforts to encourage pooling of health insurance by small businesses, provided any such health insurance plans remain subject to state law.

2006, c. 910.

§ 2.2-303. Cooperation with Department of Planning and Budget; supplemental assistance
The Assistant to the Governor shall be charged with the coordination of his work with that of the Virginia Department of Planning and Budget. The Department of Planning and Budget shall provide the Assistant to the Governor with such support, beyond that provided for in §§ 2.2-301 and 2.2-302, as may prove necessary.

1978, c. 515, § 2.1-568; 1981, c. 315; 2001, c. 844; 2011, cc. 827, 867; 2013, cc. 231, 401.

Chapter 3.1 - OFFICE OF COMMONWEALTH PREPAREDNESS

§§ 2.2-304 through 2.2-306. Repealed
Repealed by Acts 2011, cc. 780 and 858, cl. 2, effective April 6, 2011.

Chapter 3.2 - OFFICE OF THE STATE INSPECTOR GENERAL

Article 1 - GENERAL PROVISIONS

§ 2.2-307. Definitions
As used in this chapter, unless the context requires a different meaning:

"Employee" means any person who is regularly employed full time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable by, no more often than biweekly, in whole or in part, a state agency.

"Nonstate agency" means any public or private foundation, authority, institute, museum, corporation, or similar organization that is (i) not a unit of state government or a political subdivision of the Commonwealth as established by general law or special act and (ii) wholly or principally supported by state funds. "Nonstate agency" shall not include any such entity that receives state funds (a) as a subgrantee of a state agency, (b) through a state grant-in-aid program authorized by law, (c) as a result of an award of a competitive grant or a public contract for the procurement of goods, services, or construction, or (d) pursuant to a lease of real property as described in subdivision 5 of § 2.2-1149.

"Office" means the Office of the State Inspector General.

"Officer" means any person who is elected or appointed to a public office in a state agency.

"State agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act.

2011, cc. 798, 871.

§ 2.2-308. Office created; appointment of State Inspector General

A. There is hereby created the Office of the State Inspector General, which shall be headed by a State Inspector General appointed by the Governor, subject to confirmation by the General Assembly. The State Inspector General shall be appointed for a four-year term. The State Inspector General shall have at least five years of demonstrated experience or expertise in accounting, public administration, or audit investigations as a certified public accountant or a certified internal auditor. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until 30 days after the next session of the ensuing General Assembly and, if confirmed, thereafter for the remainder of such term. The Governor may remove the State Inspector General from office for malfeasance, misfeasance, incompetence, misconduct, neglect of duty, absenteeism, conflict of interests, or failure to carry out the policies of the Commonwealth as established in the Constitution or by the General Assembly. The Governor shall set forth in a written public statement his reasons for removing the State Inspector General at the time the removal occurs.

B. The State Inspector General shall exercise the powers and perform the duties conferred or imposed upon him by law. The State Inspector General shall be responsible for the overall supervision of the Office.

C. Nothing in this chapter shall be construed to limit or prevent the General Assembly from reviewing the operations of any state agency or directing such review or audit by the Joint Legislative Audit and Review Commission or the Auditor of Public Accounts or to otherwise limit the statutory responsibilities of either the Joint Legislative Audit and Review Commission or the Auditor of Public Accounts.

2011, cc. 798, 871.

§ 2.2-309. Powers and duties of State Inspector General

A. The State Inspector General shall have power and duty to:

1. Operate and manage the Office and employ such personnel as may be required to carry out the provisions of this chapter;

2. Make and enter contracts and agreements as may be necessary and incidental to carry out the provisions of this chapter and apply for and accept grants from the United States government and agencies and instrumentalities thereof, and any other source, in furtherance of the provisions of this chapter;

3. Receive complaints from whatever source that allege fraud, waste, including task or program duplication, abuse, or corruption by a state agency or nonstate agency or by any officer or employee of the foregoing and determine whether the complaints give reasonable cause to investigate;

4. Receive complaints under § 2.2-2832 from persons alleging retaliation by an officer or employee of a state agency for providing testimony before a committee or subcommittee of the General Assembly and determine whether the complaints give reasonable cause to investigate;

5. Investigate the management and operations of state agencies, nonstate agencies, and independent contractors of state agencies to determine whether acts of fraud, waste, abuse, or corruption have been committed or are being committed by state officers or employees or independent contractors of a state agency or any officers or employees of a nonstate agency, including any allegations of criminal acts affecting the operations of state agencies or nonstate agencies. However, no investigation of an elected official of the Commonwealth to determine whether a criminal violation has occurred, is occurring, or is about to occur under the provisions of § 52-8.1 shall be initiated, undertaken, or continued except upon the request of the Governor, the Attorney General, or a grand jury;

6. Prepare a detailed report of each investigation stating whether fraud, waste, abuse, or corruption has been detected. If fraud, waste, abuse, or corruption is detected, the report shall (i) identify the person committing the wrongful act or omission, (ii) describe the wrongful act or omission, and (iii) describe any corrective measures taken by the state agency or nonstate agency in which the wrongful act or omission was committed to prevent recurrences of similar actions;

7. Provide timely notification to the appropriate attorney for the Commonwealth and law-enforcement agencies whenever the State Inspector General has reasonable grounds to believe there has been a violation of state criminal law;

8. Administer the Fraud and Abuse Whistle Blower Reward Fund created pursuant to § 2.2-3014;

9. Oversee the Fraud, Waste and Abuse Hotline;

10. Conduct performance reviews of state agencies to assess the efficiency, effectiveness, or economy of programs and to ascertain, among other things, that sums appropriated have been or are being expended for the purposes for which the appropriation was made and prepare a report for each performance review detailing any findings or recommendations for improving the efficiency,

effectiveness, or economy of state agencies, including recommending changes in the law to the Governor and the General Assembly that are necessary to address such findings;

11. Coordinate and require standards for those internal audit programs in existence as of July 1, 2012, and for other internal audit programs in state agencies and nonstate agencies as needed in order to ensure that the Commonwealth's assets are subject to appropriate internal management controls;

12. As deemed necessary, assess the condition of the accounting, financial, and administrative controls of state agencies and nonstate agencies and make recommendations to protect the Commonwealth's assets;

13. Assist agency internal auditing programs with technical auditing issues and coordinate and provide training to the Commonwealth's internal auditors;

14. Assist citizens in understanding their rights and the processes available to them to express concerns regarding the activities of a state agency or nonstate agency or any officer or employee of the foregoing;

15. Maintain data on inquiries received, the types of assistance requested, any actions taken, and the disposition of each such matter;

16. Upon request, assist citizens in using the procedures and processes available to express concerns regarding the activities of a state or nonstate agency or any officer or employee of the foregoing;

17. Ensure that citizens have access to the services provided by the State Inspector General and that citizens receive timely responses to their inquiries from the State Inspector General or his representatives; and

18. Do all acts necessary or convenient to carry out the purposes of this chapter.

B. If the State Inspector General receives a complaint from whatever source that alleges fraud, waste, abuse, or corruption by a public institution of higher education or any of its officers or employees, the State Inspector General shall, but for reasonable and articulable causes, refer the complaint to the internal audit department of the public institution of higher education for investigation. However, if the complaint concerns the president of the institution or its internal audit department, the investigation shall be conducted by the State Inspector General. The State Inspector General may provide assistance for investigations as may be requested by the public institution of higher education.

The public institution of higher education shall provide periodic updates on the status of any investigation and make the results of any such investigation available to the State Inspector General.

2011, cc. 798, 871; 2013, cc. 717, 723; 2014, c. 788; 2016, c. 628.

§ 2.2-309.1. Additional powers and duties; behavioral health and developmental services

A. The definitions found in § 37.2-100 shall apply mutatis mutandis to the terms used in this section.

B. In addition to the duties set forth in this chapter, the State Inspector General shall have the following powers and duties to:

1. Provide inspections of and make policy and operational recommendations for state facilities and for providers, including licensed mental health treatment units in state correctional facilities, in order to prevent problems, abuses, and deficiencies in and improve the effectiveness of their programs and services. The State Inspector General shall provide oversight and conduct announced and unannounced inspections of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, on an ongoing basis in response to specific complaints of abuse, neglect, or inadequate care and as a result of monitoring serious incident reports and reports of abuse, neglect, or inadequate care or other information received. The State Inspector General shall conduct unannounced inspections at each state facility at least once annually;

2. Inspect, monitor, and review the quality of services provided in state facilities and by providers as defined in § 37.2-403, including licensed mental health treatment units in state correctional facilities;

3. Access any and all information, including confidential consumer information, related to the delivery of services to consumers in state facilities or served by providers, including licensed mental health treatment units in state correctional facilities. However, the State Inspector General shall not be given access to any proceedings, minutes, records, or reports of providers that are privileged under § 8.01-581.17, except that the State Inspector General shall be given access to any privileged information in state facilities and licensed mental health treatment units in state correctional facilities. All consumer information shall be maintained by the State Inspector General as confidential in the same manner as is required by the agency or provider from which the information was obtained;

4. Keep the General Assembly and the Joint Commission on Health Care fully and currently informed by means of reports required by § 2.2-313 concerning significant problems, abuses, and deficiencies relating to the administration of the programs and services of state facilities and of providers, including licensed mental health treatment units in state correctional facilities, to recommend corrective actions concerning the problems, abuses, and deficiencies, and report on the progress made in implementing the corrective actions;

5. Review, comment on, and make recommendations about, as appropriate, any reports prepared by the Department of Behavioral Health and Developmental Services and the critical incident data collected by the Department of Behavioral Health and Developmental Services in accordance with regulations adopted under § 37.2-400 to identify issues related to quality of care, seclusion and

restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues;

6. As deemed necessary, monitor, review, and comment on regulations adopted by the Board of Behavioral Health and Developmental Services; and

7. Receive reports, information, and complaints from the Commonwealth's designated protection and advocacy system concerning issues related to quality of care provided in state facilities and by providers, including licensed mental health treatment units in state correctional facilities, and conduct independent reviews and investigations.

2013, cc. 571, 717, 723; 2014, c. 788.

§ 2.2-309.2. Additional powers and duties; Tobacco Region Revitalization Commission

The State Inspector General shall (i) review the condition of the Tobacco Region Revitalization Commission's accounting, financial, and administrative controls to ensure that the purposes set forth in Chapter 31 (§ 3.2-3100 et seq.) of Title 3.2 are lawfully achieved; (ii) investigate to resolve allegations of fraudulent, illegal, or inappropriate activities concerning (a) disbursements from the Tobacco Indemnification and Community Revitalization Endowment created pursuant to § 3.2-3104 and (b) distributions from the Tobacco Indemnification and Community Revitalization Fund created pursuant to § 3.2-3106; and (iii) detect fraud, waste, and abuse and take actions to prevent the same.

2013, cc. 717, 723.

§ 2.2-309.3. Additional powers and duties; adult corrections

A. The definitions found in § 53.1-1 shall apply mutatis mutandis to the terms used in this section.

B. In addition to the duties set forth in this chapter, the State Inspector General shall review, comment on, and make recommendations about, as appropriate, any reports prepared by the Department of Corrections and any critical incident data collected by the Department of Corrections in accordance with regulations adopted to identify issues related to quality of care, seclusion and restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues.

C. Nothing in this section shall be construed to grant the Office any authority over the operation and security of local jails that is not specified in other provisions of law.

2013, cc. 717, 723; 2014, c. 788.

§ 2.2-309.4. Additional powers and duties; juvenile justice

A. The definitions found in § 66-12 shall apply mutatis mutandis to the terms used in this section.

B. In addition to the duties set forth in this chapter, the State Inspector General shall review, comment on, and make recommendations about, as appropriate, any reports prepared by the

Department of Juvenile Justice and any critical incident data collected by the Department of Juvenile Justice in accordance with regulations adopted to identify issues related to quality of care, seclusion and restraint, medication usage, abuse and neglect, staff recruitment and training, and other systemic issues.

C. Nothing in this section shall be construed to grant the Office any authority over the operation and security of detention homes that is not specified in other provisions of law.

2013, cc. 717, 723; 2014, c. 788.

§ 2.2-310. Cooperation of state agencies and officers

A. Each state agency and every officer and employee shall (i) promptly report any allegations of criminal acts or acts of fraud, waste, abuse, or corruption and (ii) cooperate with, and provide assistance to, the State Inspector General in the performance of any investigation. This reporting requirement shall be deemed satisfied for officers or employees of an agency once the agency head reports to the State Inspector General any allegations of criminal acts, fraud, waste, abuse, or corruption within the agency. Each state agency shall make its premises, equipment, personnel, books, records, and papers readily available to the State Inspector General upon request.

B. When a state agency head or officer discovers any unauthorized, illegal, irregular, or unsafe handling or expenditure of state funds, or if it comes to his attention that any unauthorized, illegal, or unsafe handling or expenditure of state funds is contemplated but not consummated, he shall promptly report the same to the State Inspector General.

C. The State Inspector General may enter upon the premises of any state agency at any time, without prior announcement, if necessary to the successful completion of an investigation. In the course of an investigation, the State Inspector General may question any officer or employee serving in, and any person transacting business with, the state agency and may inspect and copy any books, records, or papers in the possession of the state agency. The State Inspector General shall preserve the confidentiality of any information obtained from a state agency during the course of an investigation in accordance with applicable state and federal law.

2011, cc. 798, 871; 2013, cc. 717, 723.

§ 2.2-311. Enforcement of laws by the State Inspector General or investigators; police power of the Office of State Inspector General; training

A. The State Inspector General may designate himself and no more than 30 members of the investigations unit of the Office to have the same powers as a sheriff or a law-enforcement officer in the investigation of allegations of criminal behavior affecting the operations of a state agency or non-state agency pursuant to his duties as set forth in this chapter. Such employees shall be subject to any minimum training standards established by the Department of Criminal Justice Services under § 9.1-102 for law-enforcement officers prior to exercising any law-enforcement power under this subsection.

The State Inspector General and the Superintendent of the Virginia State Police shall enter into a Memorandum of Understanding setting forth the respective roles and responsibilities of their agencies, including but not limited to the categories of investigations that will be overseen by each agency and how to avoid redundancy or operation conflicts. The Memorandum of Understanding will be approved by the Governor's chief of staff and will be reviewed periodically at the request of either agency, but not less than every four years, and revised as agreed to by the agencies and endorsed by the Governor's chief of staff.

B. The State Inspector General or investigators as may be designated by him also shall have the authority to issue summonses for violations of the statutes that the State Inspector General is required to enforce. In the event a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72.

C. All investigators appointed by the State Inspector General are vested with the authority to administer oaths or affirmations for the purpose of receiving complaints and conducting investigations of violations of the statutes and regulations that the State Inspector General is required to enforce. Such investigators are vested with the authority to obtain, serve, and execute any warrant, paper, or process issued by any court or magistrate or under the authority of the State Inspector General, and request and receive criminal history information under the provisions of § 19.2-389.

2011, cc. 798, 871; 2013, cc. 717, 723.

§ 2.2-312. Subpoenas

A. The State Inspector General or a designated subordinate may issue a subpoena for the appearance of an individual before any hearing conducted by the Office. The subpoena shall be served by the State Inspector General or a designated subordinate and enforced by the court of that jurisdiction.

B. The State Inspector General may make an ex parte application to the circuit court for the county or city wherein evidence sought is kept for the issuance of a subpoena duces tecum in furtherance of an investigation or to request production of any relevant records, documents, and physical or other evidence of any person, partnership, association, or corporation located in the Commonwealth. The court may issue and compel compliance with such a subpoena upon a showing of reasonable cause. Upon determining that reasonable cause exists to believe that evidence may be destroyed or altered, the court may issue a subpoena duces tecum requiring the immediate production of evidence.

2011, cc. 798, 871.

§ 2.2-313. Reports

A. The State Inspector General shall prepare an annual report to the Governor and the General Assembly summarizing the activities of the Office. Such report shall include, but need not be limited to: (i) a description of any significant problems, abuses, and deficiencies related to the management or operation of state agencies or nonstate agencies during the reporting period; (ii) a description of the recommendations for any corrective actions made by the Office during the reporting period with respect to significant problems, abuses, or deficiencies identified; (iii) a summary of matters referred to the attorneys for the Commonwealth and law-enforcement agencies and actions taken on them during the reporting period; (iv) information concerning the numbers of complaints received and types of investigations completed by the Office during the reporting period; (v) the development and maintenance of internal audit programs in state agencies and nonstate agencies; and (vi) the results of any state agency performance reviews, including a summary of any findings or recommendations for improving the efficiency of state agencies. The annual report shall cover the period July 1 until June 30 of the immediately preceding fiscal year. Notwithstanding any other provision of law, annual reports shall be transmitted directly to the Governor and the General Assembly.

B. The State Inspector General shall notify the Governor's chief of staff, the Speaker, Majority Leader, and Minority Leader of the House of Delegates, and the President pro tempore, Majority Leader, and Minority Leader of the Senate of problems, abuses, or deficiencies relating to the management or operation of a state agency or nonstate agency.

C. The State Inspector General shall keep the appropriate Secretaries advised of the Office's activities as they relate to each respective Secretary on at least a quarterly basis, and of any significant problems, abuses, or deficiencies relating to the management or operation of a state agency within each such Secretary's area of responsibility. However, when the State Inspector General becomes aware of significant problems, abuses, or deficiencies relating to the management or operation of a Secretary's office, the State Inspector General shall report the same immediately to the Governor's chief of staff.

D. The State Inspector General may conduct such additional investigations and make such reports relating to the management and operation of state agencies as are, in the judgment of the State Inspector General, necessary or desirable.

E. Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted directly to the Governor's chief of staff and the General Assembly by the State Inspector General.

F. Records that are confidential under federal or state law shall be maintained as confidential by the State Inspector General and shall not be further disclosed, except as required by law.

2011, cc. 798, 871; 2013, cc. 717, 723.

Article 2 - BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

§§ 2.2-314 through 2.2-316. Repealed
Repealed by Acts 2013, cc. 717 and 723, cl. 2.

Article 3 - CORRECTIONS

§§ 2.2-317, 2.2-318. Repealed
Repealed by Acts 2013, cc. 717 and 723, cl. 2.

Article 4 - JUVENILE JUSTICE

§§ 2.2-319, 2.2-320. Repealed
Repealed by Acts 2013, cc. 717 and 723, cl. 2.

Article 5 - TRANSPORTATION

§ 2.2-321. Repealed
Repealed by Acts 2013, cc. 717 and 723, cl. 2.

Article 6 - TOBACCO INDEMNIFICATION AND COMMUNITY REVITALIZATION

§ 2.2-322. Repealed
Repealed by Acts 2013, cc. 717 and 723, cl. 2.

Chapter 4 - SECRETARY OF THE COMMONWEALTH

Article 1 - GENERAL PROVISIONS

§ 2.2-400. Appointment and term of office; filling vacancies; oath
A. The Governor shall appoint, subject to confirmation by the General Assembly, a Secretary of the Commonwealth for a term commencing on the Monday after the third Wednesday in January after his inauguration. The appointment shall be for a term of four years. Vacancies shall be filled by appointment by the Governor for the unexpired term and shall be effective until thirty days after the next meeting of the ensuing General Assembly and, if confirmed, thereafter for the remainder of the term.

B. The Secretary of the Commonwealth, before he acts as such, shall, in addition to the other oaths prescribed by law, take an oath to keep secret such matters as he may be required by the Governor to conceal.

Code 1950, § 2-59; 1958, c. 1, § 2-57.1; 1966, c. 677, §§ 2.1-65, 2.1-67; 2001, c. 844.

§ 2.2-401. Ex officio Secretary to Governor; in charge of division of records
The Secretary of the Commonwealth, who shall be ex officio Secretary to the Governor, shall be in direct charge of the division of records.

Code 1950, § 2-58; 1966, c. 677, § 2.1-66; 2001, c. 844.

§ 2.2-401.01. Liaison to Virginia Indian tribes

A. The Secretary of the Commonwealth shall:

1. Serve as the Governor's liaison to the Virginia Indian tribes; and

2. Report annually on the status of Indian tribes in Virginia.

B. The Secretary of the Commonwealth may establish a Virginia Indian advisory board to assist the Secretary in reviewing applications seeking recognition as a Virginia Indian tribe and to make recommendations to the Secretary, the Governor, and the General Assembly on such applications and other matters relating to recognition as follows:

1. The members of any such board shall be composed of no more than seven members to be appointed by the Secretary as follows: at least three of the members shall be members of Virginia recognized tribes to represent the Virginia Indian community, and one nonlegislative citizen member shall represent the Commonwealth's scholarly community. The Librarian of Virginia, the Director of the Department of Historic Resources, and the Superintendent of Public Instruction, or their designees, shall serve ex officio with voting privileges. Nonlegislative citizen members of any such board shall be citizens of the Commonwealth. Ex officio members shall serve terms coincident with their terms of office. Nonlegislative citizen members shall be appointed for a term of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. The Secretary of the Commonwealth shall appoint a chairperson from among the members for a two-year term. Members shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

2. Any such board shall have the following powers and duties:

a. Establish guidance for documentation required to meet the criteria for full recognition of the Virginia Indian tribes that is consistent with the principles and requirements of federal tribal recognition;

b. Establish a process for accepting and reviewing all applications for full tribal recognition;

c. Appoint and establish a workgroup on tribal recognition composed of nonlegislative citizens at large who have knowledge of Virginia Indian history and current status. Such workgroup (i) may be activated in any year in which an application for full tribal recognition has been submitted and in other years as deemed appropriate by any such board and (ii) shall include at a minimum a genealogist and at least two scholars with recognized familiarity with Virginia Indian tribes. No member of the workgroup shall be associated in any way with the applicant. Members of the workgroup shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825;

d. Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or personal property for the purpose of aiding or facilitating the work of the board;

e. Make recommendations to the Secretary for full tribal recognition based on the findings of the workgroup and the board; and

f. Perform such other duties, functions, and activities as may be necessary to facilitate and implement the objectives of this subsection.

2014, c. 582; 2016, c. 746.

§ 2.2-401.1. Certified mail; subsequent mail or notices may be sent by regular mail

Whenever in the Code of Virginia the Secretary is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by the Secretary may be sent by regular mail.

2011, c. 566.

§ 2.2-402. Keeper of seals of Commonwealth; duties generally

A. The Secretary of the Commonwealth shall (i) be keeper of the seals of the Commonwealth; (ii) keep a record of all executive acts, arrange and preserve all records and papers belonging to the executive branch of state government; (iii) be charged with the clerical duties of that department; and (iv) render to the Governor, in the dispatch of executive business, such services as he requires. The Secretary of the Commonwealth shall record or register all papers or documents required by law to be registered or recorded in his office, and, when required, furnish a copy of any record in his office under the seal of the Commonwealth.

B. The Secretary of the Commonwealth may authenticate records of any court of the Commonwealth and of any department of the government. He shall keep a register of all city, incorporated town, county, and district officers, and, when required, give a certificate of the election and qualification of any such officer.

C. The Secretary of the Commonwealth shall make an annual report to the Governor, identifying the following: (a) the boards of visitors of all public institutions, and other boards appointed by the Governor; (b) all commissions issued under appointments made by the Governor, except commissions to notaries public; (c) all departments, boards, councils, commissions, and other collegial bodies created in the executive branch of state government; and (d) such other matters as the Governor requires.

The annual report shall also include:

1. An organizational chart of state government that (i) identifies each agency, department, and institution of state government and (ii) contains a brief description of the duties of each agency, department, and institution. The Secretary of the Commonwealth may include such other information in the organizational chart as the Secretary deems appropriate. Annually, the Secretary shall make such revisions to the organizational chart as are necessary to ensure its accuracy. The organizational chart shall be posted on the Commonwealth's website; and

2. Information and photographs of the members of the General Assembly; these materials shall be maintained for the Secretary's use in the annual report by the Clerks of the House of Delegates and the Senate.

The reports shall be transmitted by the Governor to the General Assembly, printed as other annual reports are printed, bound in a separate volume, and disposed of according to law.

D. The Secretary of the Commonwealth shall collect all fees described in § 2.2-409, and all other fees of office and commissions, accruing and pay them into the state treasury.

Code 1950, §§ 2-60, 14-13; 1956, c. 217; 1964, c. 386, § 14.1-14; 1966, c. 677, § 2.1-68; 1998, c. 872; 1999, c. 51; 2001, c. 844; 2012, c. 271.

§ 2.2-403. Compilation of compacts and related records and reports

The Secretary of the Commonwealth shall conserve a copy of each of the compacts to which the Commonwealth is now or has been a party, commencing with the compact entered into with the state of North Carolina that is referenced in chapter XXIX of the October Session of the 1778 Acts of the General Assembly. The record shall contain the dates on which the compacts were confirmed by the Commonwealth.

In accordance with § 30-154.1, beginning July 1, 2001, the Virginia Code Commission shall annually forward to the Secretary of the Commonwealth any newly enacted, amended or repealed compact as it was adopted by the Commonwealth.

The Secretary of the Commonwealth shall also maintain all records relating to the appointment of persons in accordance with compacts confirmed by the Commonwealth.

The Secretary of the Commonwealth shall report to the Governor and the Virginia Commission on Interstate Cooperation within fifteen days after the convening of each legislative session, and at such other times as deemed appropriate, on appointments and vacancies to the interstate boards, commissions and committees established for the purposes of such compacts.

1976, c. 198, § 2.1-68.1; 2001, cc. 100, 844.

§ 2.2-404. Certifying records for use in other states

Whenever any record of any court in the Commonwealth or of any department of the government is to be used in another state in the United States, the Secretary of the Commonwealth shall authenticate the same in the manner and give the certificates required by the laws of the state when such record is to be used, as far as practicable.

Code 1950, § 2-61; 1966, c. 677, § 2.1-69; 2001, c. 844.

§ 2.2-405. Secretary of Commonwealth to present list of vacancies to arise on commissions, boards, etc

The Secretary of the Commonwealth shall prepare by the fifteenth of January in each year a list of all vacancies that are scheduled to arise during that year on all boards, commissions, councils or other collegial bodies appointed by the Governor. The list shall be presented to the Governor and the General Assembly as soon as practicable following its preparation, and the Secretary of the Commonwealth shall make copies of the list available to the public at cost.

1979, c. 141, § 2.1-42.2; 2001, c. 844.

§ 2.2-406. Secretary of Commonwealth to report list of interim appointments requiring confirmation; other appointments

A. The Secretary of the Commonwealth shall periodically, during the interim between sessions of the General Assembly, present to the chairmen of the Senate and House Committees on Privileges and Elections a list of the names of all persons appointed by the Governor that require confirmation by the General Assembly. A list shall be presented by June 1, August 1, October 1, and December 1, and shall include the names of all persons so appointed since adjournment or since the last required report, the position to which appointed, and the person whom the appointee will succeed.

B. The Secretary of the Commonwealth shall report to the General Assembly by December 1 of each year, the number of persons appointed to any state board, commission, agency or authority, categorized by race, gender and national origin. Information on the race, gender and national origin of appointees shall be obtained through voluntary self-identification following appointment. Such information shall be used solely for the purpose of compiling the statistical information required under this section and any personally identifiable information collected under this section shall be confidential and shall be exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.).

1994, c. 846, § 2.1-42.3; 1995, c. 579; 2001, c. 844.

§ 2.2-406.1. Secretary of Commonwealth to maintain and transfer records on collegial bodies to the Governor-elect

A. The Secretary of the Commonwealth shall maintain an electronic database of collegial bodies to which the Governor makes appointments. The database shall be organized by collegial body and include the following information:

1. Authority for each appointment;

2. Term length and term expiration dates for each appointee;

3. Eligibility requirements or other restrictions affecting the next appointment;

4. Name, address, and telephone number of each appointee;

5. Identity of the chairman and vice-chairman and the method of their election; and

6. Name of the affiliated agency or entity that provides staff support and the name and telephone number of the contact person within such agency or entity.

B. Agencies and entities of the Commonwealth that provide staff support to a collegial body shall notify the Secretary of the Commonwealth of an appointee's death or resignation and any changes to the contact information for an appointee or staff or a appointee's eligibility status.

C. The electronic database or copy thereof shall be transferred to each Governor-elect upon request.

2003, cc. 532, 556.

§ 2.2-407. Reserved

Reserved.

§ 2.2-408. Collection of information relevant to boundary changes from governmental subdivisions of Commonwealth

The Secretary of the Commonwealth shall be responsible for the collection from the governmental subdivisions of the Commonwealth of information relevant to their boundary changes and the dissemination of such information to the appropriate departments of state government.

1978, c. 641, § 2.1-71.1; 2001, c. 844.

§ 2.2-409. Secretary of the Commonwealth

A. The Secretary of the Commonwealth shall charge the following fees for services rendered in his office to be paid by the person for whom the service is rendered at the time it is done:

For a testimonial, including seal tax	$10.00
For each authentication after the first testimonial for documents bearing the testament by the same person on the same date, including seal tax	5.00
For a copy of any paper, if on one sheet	1.00
And for each sheet after the first	.75
For issuing a commission to a commissioner in another state	7.00
For power of attorney for nonresident insurers, contractors	3.00
For service of process on parties, each defendant	19.00
For service of process on reciprocal insurers	7.00
For registration of name, badge and insignia	7.50
For affixing the Seal of the Commonwealth	2.00
For issuing a commission to a notary for the Commonwealth at large, including seal tax	35.00
For issuing a commission to an electronic notary public	35.00

And for filing in his office any paper required by law to be filed, the same fee as is allowed by law for recording similar papers.

B. Notwithstanding any other provision of law, the Secretary shall charge a technology fee of $10 in addition to the fees set out in subsection A for commissioning of a notary public or electronic notary public, which funds shall be deposited into the Secretary of the Commonwealth's

Technology Trust Fund established by the comptroller and used only to obtain and update office automation and information technology equipment including software and conversion services; to preserve, maintain, and enhance records, including but not limited to the costs of repairs, maintenance, service contracts, and system upgrades; and to improve public access to records. There shall be no transfers out of the fund, including transfers to the general fund.

Code 1950, § 14-114; 1964, c. 386, § 14.1-103; 1966, c. 272; 1976, c. 559; 1979, c. 14; 1984, c. 362; 1987, cc. 449, 459; 1998, cc. 259, 872, § 2.1-71.2; 2001, c. 844; 2007, cc. 269, 362, 590.

§ 2.2-410. Appointment of assistants; deputy to act in absence of Secretary; notice to Governor

A. The Secretary of the Commonwealth shall appoint in his office the assistants allowed by law.

B. During the absence of the Secretary of the Commonwealth from his office his duties shall be performed by the Deputy Secretary, but when such absence is for more than five days at a time, notice thereof shall be given to the Governor.

Code 1950, §§ 2-63, 2-64; 1966, c. 677, §§ 2.1-72, 2.1-73; 2001, c. 844.

Article 2 - REGISTRATION OF NAMES OR INSIGNIA OF CERTAIN ORGANIZATIONS

§ 2.2-411. Registration of names or insignia of certain societies, organizations or associations; alteration or cancellation of name

Any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or any other society, organization or association, degree, branch, subordinate lodge, or auxiliary thereof, whether incorporated or unincorporated, the principles and activities of which are not repugnant to the Constitution and laws of the United States or the Commonwealth, may register, in the office of the Secretary of the Commonwealth, a facsimile, duplicate, or description of its name, badge, motto, button, declaration, charm, emblem, rosette or other insignia, and may, by reregistration, alter or cancel the name.

Code 1950, § 38-308; 1952, c. 225, § 2-64.1; 1966, c. 677, § 2.1-74; 2001, c. 844.

§ 2.2-412. Application for such registration, alteration or cancellation

Application for registration, alteration, or cancellation under this article shall be made by the chief officer of the association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, upon blanks to be provided by the Secretary of the Commonwealth.

Code 1950, § 38-309; 1952, c. 225, § 2-64.2; 1966, c. 677, § 2.1-75; 2001, c. 844.

§ 2.2-413. Registration for benefit of associated branches, etc

Registration shall be for the use, benefit, and on behalf of all associations, degrees, branches, subordinate lodges, and auxiliaries of such associations, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, and the individual members of such organizations, throughout the Commonwealth.

Code 1950, § 38-310; 1952, c. 225, § 2-64.3; 1966, c. 677, § 2.1-76; 2001, c. 844.

§ 2.2-414. Record of registration; certification of registration; fees

A. The Secretary of the Commonwealth shall keep a properly indexed record of the registration provided for by § 2.2-411, which record shall also show any altered or canceled registration.

B. Upon granting registration provided in § 2.2-411, the Secretary of the Commonwealth shall issue his certificate to the petitioners, setting forth the fact of such registration.

C. The fees of the Secretary of the Commonwealth for registration, alteration, cancellation, searches, and certificates issued pursuant to this article shall be the same as provided by law for similar services.

Code 1950, § 38-311; 1952, c. 225, § 2-64.4; 1966, c. 677, §§ 2.1-77, 2.1-79, 2.1-81; 2001, c. 844.

§ 2.2-415. Names or insignia not to be imitative

No registration shall be granted or alteration permitted to any association, lodge, order, fraternal society, beneficial association, or fraternal and beneficial society or association, historical, military, or veterans' organization, labor union, foundation, federation, or other society, organization, or association, degree, branch, subordinate lodge, or auxiliary thereof, having a name, badge, motto, button, decoration, charm, emblem, rosette, or other insignia, similar to, imitating, or so nearly resembling as to be calculated to deceive, any other name, badge, button, decoration, charm, emblem, rosette, or other insignia whatsoever, already registered pursuant to the provisions of § 2.2-411.

Code 1950, § 38-312; 1952, c. 225, § 2-64.5; 1966, c. 677, § 2.1-78; 2001, c. 844.

§ 2.2-416. Registration of mottoes or slogans of state departments; exemptions

Any state department, division, board, commission, agency or facility owned and operated by the Commonwealth, which develops or creates, or commissions the development or creation of a motto or slogan for its use pursuant to or in furtherance of the programs or business of the department, division, agency or facility, shall without delay register the motto or slogan with the Secretary of the Commonwealth, who shall maintain a record of such registration to be open to public inspection during normal office hours.

However, public institutions of higher education in Virginia and units of the Virginia National Guard shall be exempt from the requirements of this section.

1972, c. 403, § 2.1-81.1; 2001, c. 844.

§ 2.2-417. Use of registered motto or slogan or recognizable variation thereof; penalty for violation

A. Upon registration of a motto or slogan as provided in § 2.2-416, no individual, partnership, association or corporation shall employ such motto or slogan or a recognizable variation thereof on any article offered for sale to the public at a price above the actual cost of production of the article without the express consent of the registrant, which, if it approved of such use, may require payment of a reasonable fee or royalty for the use of its motto or slogan and, in addition, may impose restrictions upon such use.

B. No individual, partnership, association or corporation shall otherwise publicly use a recognizable variation of a registered motto or slogan for any purpose without the express consent of the registrant. Such consent may in any event be revoked by the registrant upon thirty days' written notice to the licensee. All fees or royalties collected pursuant to this section shall be paid into the general fund of the state treasury.

Public use of a registered motto or slogan or a recognizable variation of a registered motto or slogan for any purpose without the express consent of the registrant or the continued use of a registered motto or slogan or recognizable variation thereof following withdrawal of consent to such use by the registrant shall be punishable by a fine of no more than $1,000. Each day of violation shall constitute a separate offense.

1972, c. 403, §§ 2.1-81.2, 2.1-81.3; 2001, c. 844.

Article 3 - REGISTRATION OF LOBBYISTS

§ 2.2-418. Statement of intent and purposes

The General Assembly finds and declares the following:

1. The operation of open and responsible government requires the fullest opportunity to be afforded to the people to petition their government for the redress of grievances and to express freely their opinions on legislative and executive actions.

2. The identity and expenditures of certain persons who attempt to influence legislative and executive actions with respect to legislation and executive orders should be publicly identified to preserve and maintain the integrity of government.

1994, cc. 857, 937, § 2.1-779; 2001, c. 844.

§ 2.2-419. Definitions

As used in this article, unless the context requires a different meaning:

"Anything of value" means:

1. A pecuniary item, including money, or a bank bill or note;

2. A promissory note, bill of exchange, order, draft, warrant, check, or bond given for the payment of money;

3. A contract, agreement, promise, or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money;

4. A stock, bond, note, or other investment interest in an entity;

5. A receipt given for the payment of money or other property;

6. A right in action;

7. A gift, tangible good, chattel, or an interest in a gift, tangible good, or chattel;

8. A loan or forgiveness of indebtedness;

9. A work of art, antique, or collectible;

10. An automobile or other means of personal transportation;

11. Real property or an interest in real property, including title to realty, a fee simple or partial interest, present or future, contingent or vested within realty, a leasehold interest, or other beneficial interest in realty;

12. An honorarium or compensation for services;

13. A rebate or discount in the price of anything of value unless the rebate or discount is made in the ordinary course of business to a member of the public without regard to that person's status as an executive or legislative official, or the sale or trade of something for reasonable compensation that would ordinarily not be available to a member of the public;

14. A promise or offer of employment; or

15. Any other thing of value that is pecuniary or compensatory in value to a person.

"Anything of value" does not mean a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2.

"Compensation" means:

1. An advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money or anything of value; or

2. A contract, agreement, promise or other obligation for an advance, conveyance, forgiveness of indebtedness, deposit, distribution, loan, payment, gift, pledge, or transfer of money or anything of value, for services rendered or to be rendered.

"Compensation" does not mean reimbursement of expenses if the reimbursement does not exceed the amount actually expended for the expenses and it is substantiated by an itemization of expenses.

"Council" means the Virginia Conflict of Interest and Ethics Advisory Council established in § 30-355.

"Executive action" means the proposal, drafting, development, consideration, amendment, adoption, approval, promulgation, issuance, modification, rejection, or postponement by an executive agency or official of legislation or executive orders issued by the Governor. "Executive action" includes procurement transactions.

"Executive agency" means an agency, board, commission, or other body in the executive branch of state government. "Executive agency" includes the State Corporation Commission, the Virginia Workers' Compensation Commission, and the Virginia Lottery.

"Executive official" means:

1. The Governor;

2. The Lieutenant Governor;

3. The Attorney General;

4. Any officer or employee of the office of the Governor, Lieutenant Governor, or Attorney General other than a clerical or secretarial employee;

5. The Governor's Secretaries, the Deputy Secretaries, and the chief executive officer of each executive agency; or

6. Members of supervisory and policy boards, commissions and councils, as defined in § 2.2-2100, however selected.

"Expenditure" means:

1. A purchase, payment, distribution, loan, forgiveness of a loan or payment of a loan by a third party, advance, deposit, transfer of funds, a promise to make a payment, or a gift of money or anything of value for any purpose;

2. A payment to a lobbyist for salary, fee, reimbursement for expenses, or other purpose by a person employing, retaining, or contracting for the services of the lobbyist separately or jointly with other persons;

3. A payment in support of or assistance to a lobbyist or the lobbyist's activities, including the direct payment of expenses incurred at the request or suggestion of the lobbyist;

4. A payment that directly benefits an executive or legislative official or a member of the official's immediate family;

5. A payment, including compensation, payment, or reimbursement for the services, time, or expenses of an employee for or in connection with direct communication with an executive or legislative official;

6. A payment for or in connection with soliciting or urging other persons to enter into direct communication with an executive or legislative official; or

7. A payment or reimbursement for categories of expenditures required to be reported pursuant to this chapter.

"Expenditure" does not mean a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2.

"Fair market value" means the price that a good or service would bring between a willing seller and a willing buyer in the open market after negotiations. If the fair market value cannot be determined, the actual price paid for the good or service shall be given consideration.

"Gift" means anything of value, including any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value, and includes services as well as gifts of transportation, local travel, lodgings, and meals, whether provided in-kind or by purchase of a ticket, payment in advance, or reimbursement after the expense has been incurred.

"Gift" does not mean:

1. Printed informational or promotional material;

2. A gift that is not used and, no later than 60 days after receipt, is returned to the donor or delivered to a charitable organization and is not claimed as a charitable contribution for federal income tax purposes;

3. A devise or inheritance;

4. A gift of a value of less than $20;

5. Any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used;

6. Any food or beverages provided to an individual at an event at which the individual is performing official duties related to his public service;

7. Any food and beverages received at or registration or attendance fees waived for any event at which the individual is a featured speaker, presenter, or lecturer;

8. An unsolicited award of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service;

9. Any gift to an individual's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse;

10. Travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference

where attendance is approved by the House Committee on Rules or its Chairman or the Senate Committee on Rules or its Chairman; or

11. Travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment.

"Immediate family" means (i) the spouse and (ii) any other person who resides in the same household as the executive or legislative official and who is a dependent of the official.

"Legislative action" means:

1. Preparation, research, drafting, introduction, consideration, modification, amendment, approval, passage, enactment, tabling, postponement, defeat, or rejection of a bill, resolution, amendment, motion, report, nomination, appointment, or other matter by the General Assembly or a legislative official;

2. Action by the Governor in approving, vetoing, or recommending amendments for a bill passed by the General Assembly; or

3. Action by the General Assembly in overriding or sustaining a veto by the Governor, considering amendments recommended by the Governor, or considering, confirming, or rejecting an appointment of the Governor.

"Legislative official" means:

1. A member or member-elect of the General Assembly;

2. A member of a committee, subcommittee, commission, or other entity established by and responsible to the General Assembly or either house of the General Assembly; or

3. Persons employed by the General Assembly or an entity established by and responsible to the General Assembly.

"Lobbying" means:

1. Influencing or attempting to influence executive or legislative action through oral or written communication with an executive or legislative official; or

2. Solicitation of others to influence an executive or legislative official.

"Lobbying" does not mean:

1. Requests for appointments, information on the status of pending executive and legislative actions, or other ministerial contacts if there is no attempt to influence executive or legislative actions;

2. Responses to published notices soliciting public comment submitted to the public official designated in the notice to receive the responses;

3. The solicitation of an association by its members to influence legislative or executive action; or

4. Communications between an association and its members and communications between a principal and its lobbyists.

"Lobbyist" means:

1. An individual who is employed and receives payments, or who contracts for economic consideration, including reimbursement for reasonable travel and living expenses, for the purpose of lobbying;

2. An individual who represents an organization, association, or other group for the purpose of lobbying; or

3. A local government employee who lobbies.

"Lobbyist's principal" or "principal" means the entity on whose behalf the lobbyist influences or attempts to influence executive or legislative action. An organization whose employees conduct lobbying activities on its behalf is both a principal and an employer of the lobbyists. In the case of a coalition or association that employs or retains others to conduct lobbying activities on behalf of its membership, the principal is the coalition or association and not its individual members.

"Local government" means:

1. Any county, city, town, or other local or regional political subdivision;

2. Any school division;

3. Any organization or entity that exercises governmental powers that is established pursuant to an interstate compact; or

4. Any organization composed of members representing entities listed in subdivisions 1, 2, or 3 of this definition.

"Local government employee" means a public employee of a local government.

"Person" means an individual, proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, estate, company, corporation, association, club, committee, organization, or group of persons acting in concert.

"Procurement transaction" means all functions that pertain to obtaining all goods, services, or construction on behalf of an executive agency, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration where the stated or expected value of the contract is $5 million or more.

"Secretary" means the Secretary of the Commonwealth.

"Value" means the actual cost or fair market value of an item or items, whichever is greater. If the fair market value cannot be determined, the actual amount paid for the item or items shall be given consideration.

"Widely attended event" means an event at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who share a common interest, (ii) who are members of a public, civic, charitable, or professional organization, (iii) who are from a particular industry or profession, or (iv) who represent persons interested in a particular issue.

1994, cc. 857, 937, § 2.1-780; 2001, c. 844; 2006, cc. 787, 843, 892; 2014, cc. 225, 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-420. Exemptions

The registration and reporting provisions of this article shall not apply to:

1. The Governor, Lieutenant Governor, Attorney General, and their immediate staffs or the Governor's Secretaries and their immediate staffs, acting in an official capacity;

2. Members of the General Assembly and other legislative officials and legislative employees acting in an official capacity;

3. Local elected officials acting in an official capacity;

4. Any employee of a state executive agency acting in an official capacity;

5. A duly elected or appointed official or employee of the United States acting in an official capacity;

6. An individual who limits lobbying solely to (i) formal testimony before a public meeting of an executive agency or legislative body and registers the appearance in the records of the agency or body and (ii) testimony and information compelled by action of an executive agency or legislative body;

7. A person who receives $500 or less in compensation and reimbursements, excluding personal living and travel expenses that are not reimbursed from any other source, in a calendar year for his lobbying activities;

8. A person who receives no compensation or anything of value for lobbying, and does not expend more than $500, excluding personal living and travel expenses that are not reimbursed from any other source, in lobbying in the calendar year; or

9. An employee of a business, other entity, or local government whose job duties do not regularly include lobbying.

1994, cc. 857, 937, § 2.1-781; 2001, c. 844; 2006, c. 843; 2015, cc. 763, 777.

§ 2.2-421. Reporting requirements for certain state agencies

A. The chief administrative officer of each board, department, institution, or agency of the Commonwealth shall file a registration statement with the Secretary of the Commonwealth on behalf of the officers and employees who will be engaged in lobbying as defined in § 2.2-419 and shall

comply with the provisions of this article that require lobbyists to register with the Secretary of the Commonwealth. No fee shall be collected for registrations required by this section.

B. Any state governmental body required to file a registration under this section shall comply with the provisions of this article relating to registration.

C. The registration requirements of this section shall not apply to:

1. The Governor, Lieutenant Governor, Attorney General and their immediate staffs, or the Governor's Secretaries and their deputies and immediate staffs, acting in an official capacity;

2. Members of the General Assembly and other legislative officials and legislative employees acting in an official capacity;

3. The chief administrative officer of each department or division in the executive branch of state government;

4. The chief administrative officer of each division of the State Corporation Commission; or

5. Any state government employee acting in an official capacity.

1994, c. 915, § 2.1-781.1; 2001, c. 844.

§ 2.2-422. Registration requirements

A. A lobbyist shall register with the Secretary of the Commonwealth prior to engaging in lobbying. A lobbyist who engages in lobbying entirely outside the capital city shall comply with this section by registering with the Secretary within fifteen days after first engaging in lobbying. Registration shall be required annually and expire May 1 of each year.

B. The chief administrative officer of each local government shall register with the Secretary of the Commonwealth and file a statement pursuant to § 2.2-423 if any local government employees will act as lobbyists on its behalf. No registration fee shall be required. Each local government shall file a consolidated report in accordance with the reporting requirements of § 2.2-426 and shall maintain locally a copy of the report that is available for inspection and copying during regular business hours.

1994, cc. 857, 937, § 2.1-782; 2001, c. 844.

§ 2.2-423. Contents of registration statement

A. The registration statement shall be on a form provided by the Secretary of the Commonwealth and include the following information:

1. The name and business address and telephone number of the lobbyist;

2. The name and business address and telephone number of the person who will keep custody of the lobbyist's and the lobbyist's principal's accounts and records required to comply with this article, and the location and telephone number for the place where the accounts and records are kept;

3. The name and business address and telephone number of the lobbyist's principal;

4. The kind of business of the lobbyist's principal;

5. For each principal, the full name of the individual to whom the lobbyist reports;

6. For each principal, a statement whether the lobbyist is employed or retained and whether exclusively for the purpose of lobbying;

7. The position held by the lobbyist if he is a part-time or full-time employee of the principal;

8. The full name and business address and telephone number of each lobbyist employed by or representing the lobbyist's principal;

9. An identification of the subject matter (with as much specificity as possible) with regard to which the lobbyist or lobbyist's principal will engage in lobbying;

10. The statement of the lobbyist, which shall be signed either originally or by electronic signature as authorized by the Uniform Electronic Transactions Act (§ 59.1-479 et seq.), that the information contained on the registration statement is true and correct; and

11. A statement by which a principal may elect to waive the principal signature requirement on disclosure filings submitted by its registered lobbyist after the filing of the registration statement.

B. Whenever any change, modification or addition to his status as a lobbyist is made, the lobbyist shall, within one week of such change, modification or addition, furnish full information regarding the same to the Secretary of the Commonwealth on forms provided by the Secretary.

C. The Secretary of the Commonwealth shall furnish a copy of this article to any individual offering to register as a lobbyist and shall mail by certified mail a copy of this article and a copy of the information furnished by the lobbyist to the person whom the lobbyist represents to be his principal.

D. If the principal to whom the information is sent under subsection C does not, within 10 days of such mailing, file an affidavit, signed by the person or duly authorized agent of the person, denying that the lobbyist appears on his behalf, such person shall be deemed to have appointed the Secretary of the Commonwealth his agent for service of process in any prosecution arising for violation of this article. If such affidavit is filed, the Secretary shall notify the attorney for the Commonwealth of the City of Richmond.

1994, cc. 857, 937, § 2.1-783; 2001, c. 844; 2011, cc. 123, 177; 2014, cc. 792, 804.

§ 2.2-424. Registration fees

The Secretary shall collect an annual registration fee of $100 from the lobbyist for each principal for whom, or on whose behalf, the lobbyist will act. This fee shall be deposited into the general fund and used exclusively to fund the Council.

1994, cc. 857, 937, § 2.1-784; 2001, c. 844; 2015, cc. 763, 777.

§ 2.2-425. Registration information to be recorded in legislative docket; list of executive officials

A. The Secretary of the Commonwealth shall maintain in a legislative docket the information filed under § 2.2-423 pertaining to lobbying involving legislative actions during any session of the General Assembly. The Secretary shall furnish current, complete lists thereof to the clerk of each house and to each member of the General Assembly once every two weeks during the session of the General Assembly beginning with the convening of the General Assembly.

B. The Secretary of the Commonwealth shall prepare a list of executive officials, their positions and names, to be revised at least semi-annually and made available to lobbyists to assist them in complying with the provisions of this article.

1994, cc. 857, 937, § 2.1-785; 2001, c. 844.

§ 2.2-426. (Effective until January 1, 2017) Lobbyist reporting; penalty

A. Each lobbyist shall file with the Council a separate annual report of expenditures, including gifts, for each principal for whom he lobbies by July 1 for the preceding 12-month period complete through the last day of April.

B. Each principal who expends more than $500 to employ or compensate multiple lobbyists shall be responsible for filing a consolidated lobbyist report pursuant to this section in any case in which the lobbyists are each exempt under the provisions of subdivision 7 or 8 of § 2.2-420 from the reporting requirements of this section.

C. The report shall be on a form provided by the Council, which shall be substantially similar to the following and shall be accompanied by instructions provided by the Council. All reports shall be submitted electronically and in accordance with the standards approved by the Council pursuant to the provisions of § 30-356.

LOBBYIST'S DISCLOSURE STATEMENT

PART I:

(1) PRINCIPAL: _____

In Part I, item 2a, provide the name of the individual authorizing your employment as a lobbyist. The lobbyist filing this statement MAY NOT list his name in item 2a.

(2a) Name: _____

(2b) Permanent Business Address: _____

(2c) Business Telephone: _____

(3) Provide a list of executive and legislative actions (with as much specificity as possible) for which you lobbied and a description of activities conducted.

_____

_____

_____

(4) INCORPORATED FILINGS: If you are filing an incorporated disclosure statement, please complete the following:

Individual filing financial information: _____

Individuals to be included in the filing: _____

_____

(5) Please indicate which schedules will be attached to your disclosure statement:

[ ] Schedule A: Entertainment Expenses
[ ] Schedule B: Gifts
[ ] Schedule C: Other Expenses

(6) EXPENDITURE TOTALS:

a) ENTERTAINMENT	$ _____
b) GIFTS	$ _____
c) COMMUNICATIONS	$ _____
d) PERSONAL LIVING AND TRAVEL EXPENSES	$ _____
e) COMPENSATION OF LOBBYISTS	$ _____
f) HONORARIA	$ _____
g) OTHER	$ _____
TOTAL	$ _____

PART II:

(1a) NAME OF LOBBYIST: _____

(1b) Permanent Business Address: _____

(1c) Business Telephone: _____

(2) As a lobbyist, you are (check one)

[ ] EMPLOYED (on the payroll of the principal)
[ ] RETAINED (not on the payroll of the principal, however compensated)
[ ] NOT COMPENSATED (not compensated; expenses may be reimbursed)

(3) List all lobbyists other than yourself who registered to represent your principal.

_____
_____
_____

(4) If you selected "EMPLOYED" as your answer to Part II, item 2, provide your job title.

_____

PLEASE NOTE: Some lobbyists are not individually compensated for lobbying activities. This may occur when several members of a firm represent a single principal. The principal, in turn, makes a single payment to the firm. If this describes your situation, do not answer Part II, items 5a and 5b. Instead, complete Part III, items 1 and 2.

(5a) What was the DOLLAR AMOUNT OF YOUR COMPENSATION as a lobbyist? (If you have job responsibilities other than those involving lobbying, you may have to prorate to determine the part of your salary attributable to your lobbying activities.) Transfer your answer to this item to Part I, item 6e.

(5b) Explain how you arrived at your answer to Part II, item 5a.

_____
_____
_____

PART III:

PLEASE NOTE: If you answered Part II, items 5a and 5b, you WILL NOT complete this section.

(1) List all members of your firm, organization, association, corporation, or other entity who furnished lobbying services to your principal.

_____
_____
_____

(2) Indicate the total amount paid to your firm, organization, association, corporation, or other entity for ser-

vices rendered. Transfer your answer to this item to Part I, item 6e_____

SCHEDULE A

ENTERTAINMENT EXPENSES

PLEASE NOTE: Any single entertainment event included in the expense totals of the principal, with a value greater than $50, should be itemized below. Transfer any totals from this schedule to Part I, item 6a. (Please duplicate as needed.)

Date and Location of Event:

_____

_____

Description of Event (including whether or not it meets the criteria of a widely attended event):

_____

_____

Total Number of Persons Attending:

_____

Names of Legislative and Executive Officials or Members of Their Immediate Families Attending: (List names only if the average value for each person attending the event was greater than $50.)

_____

_____

_____

_____

Food	$ _____
Beverages	$ _____
Transportation of Legislative and Executive Officials or Members of Their Immediate Families	$ _____
Lodging of Legislative and Executive Officials or Members of Their Immediate Families	$ _____
Performers, Speakers, Etc.	$ _____
Displays	$ _____
Rentals	$ _____
Service Personnel	$ _____
Miscellaneous	$ _____
TOTAL	$ _____

SCHEDULE B

GIFTS

PLEASE NOTE: Any single gift reported in the expense totals of the principal, with a value greater than $50, should be itemized below. (Report meals, entertainment and travel under Schedule A.) Transfer any totals from this schedule to Part I, item 6b. (Please duplicate as needed.)

Date of gift:	Description of gift:	Name of each legislative or executive official or member of his immediate family who is a recipient of a gift:	Cost of individual gift:
_____	_____	_____	$ _____

_____	_____ _____	_____ __	$ _____
_____	_____ _____	_____ __	$ _____
_____	_____ _____	_____ __	$ _____
TOTAL COST TO PRINCIPAL			$ _____

SCHEDULE C

OTHER EXPENSES

PLEASE NOTE: This section is provided for any lobbying-related expenses not covered in Part I, items 6a — 6f. An example of an expenditure to be listed on schedule C would be the rental of a bill box during the General Assembly session. Transfer the total from this schedule to Part I, item 6g. (Please duplicate as needed.)

DATE OF EXPENSE	DESCRIPTION OF EXPENSE	AMOUNT
_____	_____ _____	$ _____
_____	_____ _____	$ _____
_____	_____ _____	$ _____
_____	_____ _____	$ _____
_____	_____ _____	$ _____
_____	_____ _____	$ _____
_____	_____ _____	$ _____
_____	_____ _____	$ _____
_____	_____ _____	$ _____
TOTAL "OTHER" EXPENSES		$ _____

PART IV: STATEMENTS The following items are mandatory and if they are not properly completed, the entire filing will be rejected and returned to the lobbyist:

(1) All signatures on the statement must be ORIGINAL in the format specified in the instructions provided by the Council that accompany this form. No stamps, or other reproductions of the individual's signature will be accepted.

(2) An individual MAY NOT sign the disclosure statement as lobbyist and principal officer.

STATEMENT OF LOBBYIST

I, the undersigned registered lobbyist, do state that the information furnished on this disclosure statement and on all accompanying attachments required to be made thereto is, to the best of my knowledge and belief, complete and accurate.

_____
Signature of lobbyist

_____
Date

STATEMENT OF PRINCIPAL

I, the undersigned principal (or an authorized official thereof), do state that the information furnished on this disclosure statement and on all accompanying attachments required to be made thereto is, to the best of my knowledge and belief, complete and accurate.

_____
Signature of principal

_____
Date

D. A person who knowingly and intentionally makes a false statement of a material fact on the disclosure statement is guilty of a Class 5 felony.

E. The name of a legislative or executive official, or a member of his immediate family, attending any reportable entertainment event shall not be required to be disclosed by the principal if that legislative or executive official reimburses the principal for, or otherwise pays for, his attendance, or the attendance of a member of his immediate family, at the entertainment event. Reimbursement shall be calculated using the average value for each person attending the event.

F. Each lobbyist shall send to each legislative and executive official who is required to be identified by name on Schedule A or B of the Lobbyist's Disclosure Form a copy of Schedule A or B or a summary of the information pertaining to that official. Copies or summaries shall be provided to the official by December 15 for the preceding 12-month period complete through November 30.

1994, cc. 857, 937, § 2.1-786; 1997, cc. 616, 635, 843; 1998, c. 732; 2000, c. 297; 2001, c. 844; 2002, cc. 248, 491; 2005, c. 90; 2006, c. 843; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-426. (Effective January 1, 2017) Lobbyist reporting; penalty

A. Each lobbyist shall file with the Council a separate annual report of expenditures, including gifts, for each principal for whom he lobbies by July 1 for the preceding 12-month period complete through the last day of April.

B. Each principal who expends more than $500 to employ or compensate multiple lobbyists shall be responsible for filing a consolidated lobbyist report pursuant to this section in any case in which the lobbyists are each exempt under the provisions of subdivision 7 or 8 of § 2.2-420 from the reporting requirements of this section.

C. The report shall be on a form prescribed by the Council and shall be accompanied by instructions provided by the Council. All reports shall be submitted electronically and in accordance with the standards approved by the Council pursuant to the provisions of § 30-356.

D. A person who knowingly and intentionally makes a false statement of a material fact on the disclosure statement is guilty of a Class 5 felony.

E. The name of a legislative or executive official, or a member of his immediate family, attending any reportable entertainment event shall not be required to be disclosed by the principal if that legislative or executive official reimburses the principal for, or otherwise pays for, his attendance, or the attendance of a member of his immediate family, at the entertainment event. Reimbursement shall be calculated using the average value for each person attending the event.

F. Each lobbyist shall send to each legislative and executive official who is required to be identified by name on Schedule A or B of the Lobbyist's Disclosure Form a copy of Schedule A or B or a summary of the information pertaining to that official. Copies or summaries shall be provided to the official by December 15 for the preceding 12-month period complete through November 30.

1994, cc. 857, 937, § 2.1-786; 1997, cc. 616, 635, 843; 1998, c. 732; 2000, c. 297; 2001, c. 844; 2002, cc. 248, 491; 2005, c. 90; 2006, c. 843; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-427. Filings; inspection

Registration statements shall be open to public inspection and copying during the regular business hours of the office of the Secretary of the Commonwealth. Lobbying reports shall be open to public inspection and copying during the regular business hours of the Council.

Registration statements shall be deemed to have been filed only when actually received in the office of the Secretary or mailed to the Secretary by registered, certified, or regular mail with the sender retaining sufficient proof of mailing, which may be a United States Postal Certificate of Mailing. Lobbying reports shall be deemed to have been filed only when received by the Council in accordance with the standards approved by the Council pursuant to § 30-356.

1994, cc. 857, 937, § 2.1-787; 2001, c. 844; 2016, cc. 773, 774.

§ 2.2-428. Standards for automated preparation and transmittal of lobbyist's disclosure statements; database

A. The Virginia Conflict of Interest and Ethics Advisory Council shall accept any lobbyist's disclosure statements required by § 2.2-426 filed by computer or electronic means in accordance with the standards approved by the Council pursuant to the provisions of § 30-356.

B. The Secretary shall establish a lobbyist disclosure database, available to the public, from required disclosure statements filed electronically and may enter into that database information from required disclosure statements filed by other methods. The Secretary shall maintain such database until January 1, 2016.

1997, cc. 364, 392, § 2.1-787.1; 2001, c. 844; 2014, cc. 792, 804.

§ 2.2-429. Retention of records by a lobbyist or lobbyist's principal

A lobbyist and a lobbyist's principal shall preserve for a period of two years all accounts, bills, books, papers, receipts, and other documents and records necessary to substantiate the expenditure reports submitted under this article.

1994, cc. 857, 937, § 2.1-788; 2001, c. 844.

§ 2.2-430. Termination

A lobbyist may terminate a lobbyist registration at any time by filing a report required under § 2.2-426 including information through the last day of lobbying activity. A termination report shall indicate that the lobbyist intends to use the report as the final accounting of lobbying activity and shall include the effective date of the termination.

1994, cc. 857, 937, § 2.1-789; 2001, c. 844; 2015, cc. 763, 777.

§ 2.2-431. Penalties; filing of substituted statement

A. Every lobbyist failing to file the statement prescribed by § 2.2-426 within the time prescribed therein shall be assessed a civil penalty of $50, and every individual failing to file the statement within 10 days after the time prescribed herein shall be assessed an additional civil penalty of $50 per day from the eleventh day of such default until the statement is filed. The Council shall notify the Secretary of any lobbyist's failure to file the statement within the time prescribed, and the penalties shall be assessed and collected by the Secretary. The Attorney General shall assist the Secretary in collecting the penalties, upon request.

B. Every lobbyist's principal whose lobbyist fails to file the statement prescribed by § 2.2-426 shall be assessed a civil penalty of $50, and shall be assessed an additional civil penalty of $50 per day from the eleventh day of such default until the statement is filed. The Council shall notify the Secretary of any lobbyist's failure to file the statement within the time prescribed, and the penalties shall be assessed and collected by the Secretary. The Attorney General shall assist the Secretary in collecting the penalties, upon request.

C. No individual who has failed to file the statement required by § 2.2-426 or who has failed to pay all penalties assessed pursuant to this section, shall register or act as a lobbyist as long as he remains in default.

D. Whenever any lobbyist is or will be in default under § 2.2-426, and the reasons for such default are or will be beyond his control, or the control of his principal, or both, the Secretary may suspend the assessment of any penalty otherwise assessable and accept a substituted statement, upon the submission of sworn proofs that shall satisfy him that the default has been beyond the control of the lobbyist or his principal, and that the substituted statement contains the most accurate and complete information available after the exercise of due diligence.

E. Penalties collected pursuant to this section shall be payable to the State Treasurer for deposit to the general fund and shall be used exclusively to fund the Council.

1994, cc. 857, 937, § 2.1-790; 2001, c. 844; 2015, cc. 763, 777.

§ 2.2-432. Contingent compensation prohibited

It shall be unlawful for any individual to lobby for compensation that is dependent in any manner upon the outcome of any legislative or executive action.

1994, cc. 857, 937, § 2.1-791; 2001, c. 844.

§ 2.2-433. Prohibited acts; violation a misdemeanor

A. No lobbyist shall:

1. Lobby in violation of the provisions of this article;

2. Make any expenditure, or obligate himself to do so, in connection with lobbying, unless he fully discloses the expenditure as required in this article; or

3. Misrepresent in any material respect or omit any information required to be reported pursuant to this article.

B. No lobbyist's principal shall:

1. Fail to file any statement required to be filed by the provisions of this article;

2. Misrepresent in any material respect or omit any information required to be reported pursuant to this article; or

3. Violate any of the provisions of this article.

C. Except as provided in subsection D of § 2.2-426, any lobbyist or lobbyist's principal violating any provision of this article shall be guilty of a Class 1 misdemeanor. However, a lobbyist who receives no compensation or anything of value for lobbying shall not be subject to the criminal penalties prescribed by this section.

1994, cc. 857, 937, § 2.1-792; 2001, c. 844.

§ 2.2-434. Employment of lobbyists prohibited; exceptions

Employment of a lobbyist for compensation by an officer, board, institution or agency of the Commonwealth, is expressly prohibited; however, this section shall not apply to any individual who is a full-time or part-time employee of such office, board, department, institution or agency of the Commonwealth.

1994, cc. 857, 937, § 2.1-793; 2001, c. 844.

§ 2.2-435. Prohibition for state party chairman

The chairman or any full-time paid employee of a state political party, as defined in § 24.2-101, or a member of his immediate family, as defined in § 2.2-3101, shall not be employed as a lobbyist by any principal.

1994, cc. 857, 937, § 2.1-794; 2001, c. 844.

Chapter 4.1 - SPECIAL ADVISOR FOR WORKFORCE DEVELOPMENT [Repealed]

§§ 2.2-435.1 through 2.2-435.5. Repealed

Repealed by Acts 2006, cc. 696 and 751, cl. 4.

Chapter 4.2 - COORDINATION OF WORKFORCE DEVELOPMENT

§ 2.2-435.6. Chief Workforce Development Officer

A. The Governor shall serve as Chief Workforce Development Officer for the Commonwealth.

B. The Governor may appoint a Chief Workforce Development Advisor who shall be responsible for the duties assigned to him pursuant to this chapter and Article 24 (§ 2.2-2470 et seq.) of Chapter 24 or other tasks as may be assigned to him by the Governor.

2006, cc. 696, 751; 2014, c. 815.

§ 2.2-435.7. Responsibilities of the Chief Workforce Development Advisor

A. The Governor's responsibilities as carried out by the Chief Workforce Development Advisor shall include:

1. Developing a strategic plan for the statewide delivery of workforce development and training programs and activities. The strategic plan shall be developed in coordination with the development of the comprehensive economic development policy required by § 2.2-205. The strategic plan shall include performance measures that link the objectives of such programs and activities to the record of state agencies, local workforce development boards, and other relevant entities in attaining such objectives;

2. Determining the appropriate allocation, to the extent permissible under applicable federal law, of funds and other resources that have been appropriated or are otherwise available for disbursement by the Commonwealth for workforce development programs and activities;

3. Ensuring that the Commonwealth's workforce development efforts are implemented in a coordinated and efficient manner by, among other activities, taking appropriate executive action to this end and recommending to the General Assembly necessary legislative actions to streamline and eliminate duplication in such efforts;

4. Facilitating efficient implementation of workforce development and training programs by cabinet secretaries and agencies responsible for such programs;

5. Developing, in coordination with the Virginia Board of Workforce Development, (i) certification standards for programs and providers and (ii) uniform policies and procedures, including standardized forms and applications, for one-stop centers;

6. Monitoring, in coordination with the Virginia Board of Workforce Development, the effectiveness of each one-stop center and recommending actions needed to improve their effectiveness;

7. Establishing measures to evaluate the effectiveness of the local workforce development boards and conducting annual evaluations of the effectiveness of each local workforce development board. As part of the evaluation process, the Governor shall recommend to such boards specific best management practices;

8. Conducting annual evaluations of the performance of workforce development and training programs and activities and their administrators and providers, using the performance measures developed through the strategic planning process described in subdivision 1. The evaluations shall include, to the extent feasible, (i) a comparison of the per-person costs for each program or activity, (ii) a comparative rating of each program or activity based on its success in meeting program objectives, and (iii) an explanation of the extent to which each agency's appropriation requests incorporate the data reflected in the cost comparison described in clause (i) and the comparative rating described in clause (ii). These evaluations, including the comparative rankings, shall be considered in allocating resources for workforce development and training programs. These evaluations shall be submitted to the chairs of the House and Senate Commerce and Labor Committees and included in the biennial reports pursuant to subdivision 10;

9. Monitoring federal legislation and policy, in order to maximize the Commonwealth's effective use of and access to federal funding available for workforce development programs; and

10. Submitting biennial reports, which shall be included in the Governor's executive budget submissions to the General Assembly, on improvements in the coordination of workforce development efforts statewide. The reports shall identify (i) program success rates in relation to performance measures established by the Virginia Board of Workforce Development, (ii) obstacles to program and resource coordination, and (iii) strategies for facilitating statewide program and resource coordination.

B. The Chief Workforce Development Advisor shall report to the Governor.

2006, cc. 696, 751; 2008, cc. 269, 388; 2010, c. 573; 2014, c. 815; 2015, cc. 275, 292.

§ 2.2-435.8. Workforce program evaluations; sharing of certain data

A. Notwithstanding any provision of law to the contrary, the agencies specified in subsection D may share data from within their respective databases solely to (i) provide the workforce program evaluation and policy analysis required by subdivision A 8 of § 2.2-435.7 and clause (i) of subdivision A 10 of § 2.2-435.7 and (ii) conduct education program evaluations that require employment outcomes data to meet state and federal reporting requirements.

B. Data shared pursuant to subsection A shall not include any personal identifying information, shall be encrypted, and shall be transmitted to the Governor or his designee. Upon receipt of such data, the Governor or his designee shall re-encrypt the data to prevent any participating agency from connecting shared data sets with existing agency files. For the purposes of this section:

1. "Identifying information" means the same as that term is defined in § 18.2-186.3; and

2. "Encrypted" means the same as that term is defined in § 18.2-186.6.

C. The Governor or his designee and all agencies authorized under this section shall destroy or erase all shared data upon completion of all required evaluations and analyses. The Governor or his designee may retain a third-party entity to assist with the evaluation and analysis.

D. The databases from the following agencies relating to the specific programs identified in this subsection may be shared solely to achieve the purposes specified in subsection A:

1. Virginia Employment Commission: Unemployment Insurance, Job Service, Trade Act, and Veterans Employment Training Programs;

2. Virginia Community College System: Postsecondary Career and Technical Education, Workforce Innovation and Opportunity Act Adult, Youth and Dislocated Worker Programs;

3. Department for Aging and Rehabilitative Services: Vocational Rehabilitation and Senior Community Services Employment Program;

4. Department for the Blind and Vision Impaired: Vocational Rehabilitation;

5. Department of Education: Adult Education and Family Literacy, Special Education, and Career and Technical Education;

6. Department of Labor and Industry: Apprenticeship;

7. Department of Social Services: Supplemental Nutrition Assistance Program and Virginia Initiative for Employment Not Welfare;

8. Virginia Economic Development Partnership: Virginia Jobs Investment Program;

9. Department of Juvenile Justice: Youth Industries and Institutional Work Programs and Career and Technical Education Programs;

10. Department of Corrections: Career and Technical Education Programs; and

11. The State Council of Higher Education for Virginia.

2010, c. 803; 2012, cc. 803, 835; 2013, c. 482; 2014, cc. 41, 464; 2015, cc. 275, 292.

§ 2.2-435.9. Annual report by publicly funded career and technical education and workforce development programs; performance on state-level metrics

Beginning November 1, 2016, and annually thereafter, each agency administering any publicly funded career and technical education and workforce development program shall submit to the Governor and the Virginia Board of Workforce Development a report detailing the program's performance against state-level metrics established by the Virginia Board of Workforce Development and the Chief Workforce Development Advisor.

2015, cc. 275, 292.

§ 2.2-435.10. Administration of the Workforce Innovation and Opportunity Act; memorandum of understanding; executive summaries

A. The Chief Workforce Development Advisor, the Commissioner of the Virginia Employment Commission, and the Chancellor of the Virginia Community College System shall enter into a memorandum of understanding that sets forth (i) the roles and responsibilities of each of these entities in administering a state workforce system and facilitating regional workforce systems that are

business-driven, aligned with current and reliable labor market data, and targeted at providing participants with workforce credentials that have demonstrated value to employers and job seekers; (ii) a funding mechanism that adequately supports operations under the federal Workforce Innovation and Opportunity Act of 2014 (P.L. 113-128)(WIOA); and (iii) a procedure for the resolution of any disagreements that may arise concerning policy, funding, or administration of the WIOA.

B. The Chief Workforce Development Advisor, the Virginia Employment Commission, and the Virginia Community College System shall collaborate to produce an annual executive summary, no later than the first day of each regular session of the General Assembly, of the interim activity undertaken to implement the memorandum of understanding described in subsection A and to administer the WIOA.

2015, cc. 275, 292.

Chapter 4.3 - COMMONWEALTH IDENTITY MANAGEMENT STANDARDS

§ 2.2-436. Approval of electronic identity standards

A. The Secretary of Technology, in consultation with the Secretary of Transportation, shall review and approve or disapprove, upon the recommendation of the Identity Management Standards Advisory Council pursuant to § 2.2-437, guidance documents that adopt (i) nationally recognized technical and data standards regarding the verification and authentication of identity in digital and online transactions; (ii) the minimum specifications and standards that should be included in an identity trust framework, as defined in § 59.1-550, so as to warrant liability protection pursuant to the Electronic Identity Management Act (§ 59.1-550 et seq.); and (iii) any other related data standards or specifications concerning reliance by third parties on identity credentials, as defined in § 59.1-550.

B. Final guidance documents approved pursuant to subsection A shall be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations as a general notice. The Secretary of Technology shall send a copy of the final guidance documents to the Joint Commission on Administrative Rules established pursuant to § 30-73.1 at least 90 days prior to the effective date of such guidance documents. The Secretary of Technology shall also annually file a list of available guidance documents developed pursuant to this chapter pursuant to § 2.2-4008 of the Virginia Administrative Process Act (§ 2.2-4000 et seq.) and shall send a copy of such list to the Joint Commission on Administrative Rules.

2015, cc. 482, 483.

§ 2.2-437. Identity Management Standards Advisory Council

A. The Identity Management Standards Advisory Council (the Advisory Council) is established to advise the Secretary of Technology on the adoption of identity management standards and the creation of guidance documents pursuant to § 2.2-436.

B.1. The Advisory Council shall consist of seven members, to be appointed by the Governor, with expertise in electronic identity management and information technology. Members shall include a representative of the Department of Motor Vehicles, a representative of the Virginia Information Technologies Agency, and five representatives of the business community with appropriate experience and expertise. In addition to the seven appointed members, the Chief Information Officer of the Commonwealth, or his designee, may also serve as an ex officio member of the Advisory Council.

2. The Advisory Council shall designate one of its members as chairman.

3. Members appointed to the Advisory Council shall serve four-year terms, subject to the pleasure of the Governor, and may be reappointed.

4. Members shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in § 2.2-2825.

5. Staff to the Advisory Council shall be provided by the Office of the Secretary of Technology.

C. Proposed guidance documents and general opportunity for oral or written submittals as to those guidance documents shall be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations as a general notice following the processes and procedures set forth in subsection B of § 2.2-4031 of the Virginia Administrative Process Act (§ 2.2-4000 et seq.). The Advisory Council shall allow at least 30 days for the submission of written comments following the posting and publication and shall hold at least one meeting dedicated to the receipt of oral comment no less than 15 days after the posting and publication. The Advisory Council shall also develop methods for the identification and notification of interested parties and specific means of seeking input from interested persons and groups. The Advisory Council shall send a copy of such notices, comments, and other background material relative to the development of the recommended guidance documents to the Joint Commission on Administrative Rules.

2015, cc. 482, 483.

Part B - DEPARTMENT OF LAW

Chapter 5 - DEPARTMENT OF LAW

Article 1 - GENERAL PROVISIONS

§ 2.2-500. Attorney General to be chief executive officer; duties generally

The Attorney General shall be the chief executive officer of the Department of Law, and shall perform such duties as may be provided by law.

Code 1950, § 2-85; 1966, c. 677, § 2.1-117; 2001, c. 844.

§ 2.2-501. Assistant and deputy Attorneys General

The Attorney General shall appoint a chief deputy Attorney General and may appoint the necessary deputy Attorneys General and assistant Attorneys General and fix their salaries within the limitation of the funds provided for the purpose in the general appropriation act.

If a vacancy occurs in the office of Attorney General for any reason, the chief deputy Attorney General shall serve as acting Attorney General until such time as the vacancy is filled pursuant to § 24.2-213. The acting Attorney General shall exercise all the powers, and duties, and enjoy all the perquisites of the office of Attorney General as are provided by law.

Code 1950, § 2-94; 1966, c. 677, § 2.1-130; 1977, c. 596; 2001, c. 844.

§ 2.2-502. Support staff

The Attorney General may appoint such persons as he deems necessary for the efficient conduct of his office, and apportion, out of the appropriation for his office, such salaries among such persons as he deems proper, but the aggregate amount paid them shall not exceed the amount provided by law.

Code 1950, § 2-95; 1966, c. 677, § 2.1-131; 2001, c. 844.

§ 2.2-503. Office space

The Governor shall assign to the Attorney General office space for the Attorney General, his assistants and employees suitable for the transaction of the legal business of the Commonwealth.

Code 1950, § 2-96; 1966, c. 677, § 2.1-132; 1994, c. 64; 2001, c. 844.

§ 2.2-504. Contingent and traveling expenses

The Attorney General may expend for the contingent expenses of his office the sums appropriated for his office by the General Assembly. The Attorney General, the deputy and assistant Attorneys General, and other employees of the office shall be reimbursed for actual travel expenses in the performance of their duties in accordance with § 2.2-2823.

Code 1950, § 2-97; 1966, c. 677, § 2.1-133; 2001, c. 844.

§ 2.2-505. Official opinions of Attorney General

A. The Attorney General shall give his advice and render official advisory opinions in writing only when requested in writing so to do by one of the following: the Governor; a member of the General Assembly; a judge of a court of record or a judge of a court not of record; the State Corporation Commission; an attorney for the Commonwealth; a county, city or town attorney in those localities in which such office has been created; a clerk of a court of record; a city or county sheriff; a city or county treasurer or similar officer; a commissioner of the revenue or similar officer; a chairman or secretary of an electoral board; or the head of a state department, division, bureau, institution or board.

B. Except in cases where an opinion is requested by the Governor or a member of the General Assembly, the Attorney General shall have no authority to render an official opinion unless the question dealt with is directly related to the discharge of the duties of the official requesting the

opinion. Any opinion request to the Attorney General by an attorney for the Commonwealth or county, city or town attorney shall itself be in the form of an opinion embodying a precise statement of all facts together with such attorney's legal conclusions.

Code 1950, § 2-86; 1966, c. 677, § 2.1-118; 1968, c. 414; 1971, Ex. Sess., c. 155; 1976, c. 715; 1999, c. 14; 2001, c. 844.

§ 2.2-506. Legal services to attorneys for the Commonwealth in certain proceedings; costs

The Attorney General shall at the request of an attorney for the Commonwealth, provide legal service to such attorney for the Commonwealth in any proceedings brought against him seeking to restrain the enforcement of any state law.

Any costs chargeable against the defendant in any such case shall be paid by the Commonwealth from the appropriation for the payment of criminal charges.

1962, c. 235, § 2-86.2; 1966, c. 677, § 2.1-120; 2001, c. 844.

§ 2.2-507. Legal service in civil matters

A. All legal service in civil matters for the Commonwealth, the Governor, and every state department, institution, division, commission, board, bureau, agency, entity, official, court, or judge, including the conduct of all civil litigation in which any of them are interested, shall be rendered and performed by the Attorney General, except as provided in this chapter and except for any litigation concerning a justice or judge initiated by the Judicial Inquiry and Review Commission. No regular counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, or official. The Attorney General may represent personally or through one or more of his assistants any number of state departments, institutions, divisions, commissions, boards, bureaus, agencies, entities, officials, courts, or judges that are parties to the same transaction or that are parties in the same civil or administrative proceeding and may represent multiple interests within the same department, institution, division, commission, board, bureau, agency, or entity. The soil and water conservation district directors or districts may request legal advice from local, public, or private sources; however, upon request of the soil and water conservation district directors or districts, the Attorney General shall provide legal service in civil matters for such district directors or districts.

B. The Attorney General may represent personally or through one of his assistants any of the following persons who are made defendant in any civil action for damages arising out of any matter connected with their official duties:

1. (Effective until July 1, 2018) Members, agents, or employees of the Alcoholic Beverage Control Board;

1. (Effective July 1, 2018) Members, agents, or employees of the Virginia Alcoholic Beverage Control Authority;

2. Agents inspecting or investigators appointed by the State Corporation Commission;

3. Agents, investigators, or auditors employed by the Department of Taxation;

4. Members, agents, or employees of the State Board of Behavioral Health and Developmental Services, the Department of Behavioral Health and Developmental Services, the State Board of Health, the State Department of Health, the Department of General Services, the State Board of Social Services, the Department of Social Services, the State Board of Corrections, the Department of Corrections, the State Board of Juvenile Justice, the Department of Juvenile Justice, the Virginia Parole Board, or the Department of Agriculture and Consumer Services;

5. Persons employed by the Commonwealth Transportation Board, the Department of Transportation, or the Department of Rail and Public Transportation;

6. Persons employed by the Commissioner of Motor Vehicles;

7. Persons appointed by the Commissioner of Marine Resources;

8. Police officers appointed by the Superintendent of State Police;

9. Conservation police officers appointed by the Department of Game and Inland Fisheries;

10. Hearing officers appointed to hear a teacher's grievance pursuant to § 22.1-311;

11. Staff members or volunteers participating in a court-appointed special advocate program pursuant to Article 5 (§ 9.1-151 et seq.) of Chapter 1 of Title 9.1;

12. Any emergency medical services agency that is a licensee of the Department of Health in any civil matter and any guardian ad litem appointed by a court in a civil matter brought against him for alleged errors or omissions in the discharge of his court-appointed duties;

13. Conservation officers of the Department of Conservation and Recreation; or

14. A person appointed by written order of a circuit court judge to run an existing corporation or company as the judge's representative, when that person is acting in execution of a lawful order of the court and the order specifically refers to this section and appoints such person to serve as an agent of the Commonwealth.

Upon request of the affected individual, the Attorney General may represent personally or through one of his assistants any basic or advanced emergency medical care attendant or technician possessing a valid certificate issued by authority of the State Board of Health in any civil matter in which a defense of immunity from liability is raised pursuant to § 8.01-225.

C. If, in the opinion of the Attorney General, it is impracticable or uneconomical for such legal service to be rendered by him or one of his assistants, he may employ special counsel for this purpose, whose compensation shall be fixed by the Attorney General. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division, or department being represented or whose members, officers, inspectors, investigators, or other employees are being represented pursuant to this section. Notwithstanding

any provision of this section to the contrary, the Supreme Court may employ its own counsel in any matter arising out of its official duties in which it, or any justice, is a party.

Code 1950, § 2-87; 1958, c. 542; 1966, cc. 222, 677, § 2.1-121; 1974, cc. 44, 45, 432; 1975, c. 372; 1976, cc. 580, 726; 1978, c. 96; 1979, c. 450; 1980, c. 255; 1981, c. 427; 1982, c. 636; 1984, cc. 703, 742; 1987, c. 326; 1988, c. 435; 1989, c. 733; 1990, cc. 637, 752, 791; 2001, c. 844; 2005, c. 236; 2007, cc. 248, 595; 2008, c. 577; 2009, cc. 813, 840; 2012, c. 563; 2013, cc. 585, 588, 646, 650; 2015, cc. 38, 502, 503, 730.

§ 2.2-507.1. Authority of Attorney General regarding charitable assets

A. The assets of a charitable corporation incorporated in or doing any business in Virginia shall be deemed to be held in trust for the public for such purposes as are established by the governing documents of such charitable corporation, the gift or bequest made to such charitable corporation, or other applicable law. The Attorney General shall have the same authority to act on behalf of the public with respect to such assets as he has with respect to assets held by unincorporated charitable trusts and other charitable entities, including the authority to seek such judicial relief as may be necessary to protect the public interest in such assets.

B. Nothing contained in this section is intended to modify the standard of conduct applicable under existing law to the directors of charitable corporations incorporated in or doing any business in Virginia.

2002, c. 792; 2004, c. 289.

§ 2.2-507.2. Youth Internet Safety Fund established

There is hereby created in the state treasury a special nonreverting fund to be known as the Youth Internet Safety Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All money as may be appropriated by the General Assembly and any gifts, bequests, grants, or donations shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of education, public awareness, and other activities to promote the safe and secure use of the Internet. Unless otherwise restricted by the terms of the gift or bequest, the Attorney General may direct the sale, exchange, or other disposition of such gifts and bequests. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Attorney General.

2007, c. 309.

§ 2.2-508. Legal service in certain redistricting proceedings

Upon notification by a county, city or town of a pending civil action challenging the legality of its election district boundaries as required by § 24.2-304.5, the Attorney General shall review the papers in the civil action and may represent the interests of the Commonwealth in developing an

appropriate remedy that is consistent with requirements of law, including but not limited to Article VII, Section 5 of the Constitution of Virginia, Chapter 3 (§ 24.2-302.2 et seq.) of Title 24.2, or Chapter 39 (§ 30-263 et seq.) of Title 30.

1989, c. 112, § 2.1-121.1; 1995, c. 249; 2001, c. 844; 2004, c. 1000; 2012, c. 1.

§ 2.2-509. Representation in administrative proceedings

Notwithstanding any other provision of law, if the Attorney General finds after consultation with the head of the affected department that it is in the best interests of the Commonwealth to do so, the Attorney General may authorize any employee of his office or any employee of a department to represent that department or an affiliated body in any administrative proceedings before the department, an affiliated body or before any hearing officer or examiner appointed or employed by the department or affiliated body.

1991, c. 227, § 2.1-121.2; 2001, c. 844.

§ 2.2-509.1. (Effective until July 1, 2018) Powers of investigators; enforcement of certain tobacco laws

Investigators with the Office of the Attorney General as designated by the Attorney General shall be authorized to seize cigarettes as defined in § 3.2-4200, which are sold, possessed, distributed, transported, imported, or otherwise held in violation of § 3.2-4207 or 58.1-1037. In addition, such investigators shall be authorized to accompany and participate with special agents of the Alcoholic Beverage Control Board or other law-enforcement officials engaging in an enforcement action under § 3.2-4207 or 58.1-1037.

2006, c. 695.

§ 2.2-509.1. (Effective July 1, 2018) Powers of investigators; enforcement of certain tobacco laws

Investigators with the Office of the Attorney General as designated by the Attorney General shall be authorized to seize cigarettes as defined in § 3.2-4200, which are sold, possessed, distributed, transported, imported, or otherwise held in violation of § 3.2-4207 or 58.1-1037. In addition, such investigators shall be authorized to accompany and participate with special agents of the Virginia Alcoholic Beverage Control Authority or other law-enforcement officials engaging in an enforcement action under § 3.2-4207 or 58.1-1037.

2006, c. 695; 2015, cc. 38, 730.

§ 2.2-510. Employment of special counsel generally

No special counsel shall be employed for or by the Governor or any state department, institution, division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of any circuit court or district court except in the following cases:

1. When the Governor determines that, because of the nature of the legal service to be performed, the Attorney General's office is unable to render such service, then the Governor shall issue an

exemption order stating with particularity the facts and reasons leading to the conclusion that the Attorney General's office is unable to render such service. The Governor may then employ special counsel to render such service as he may deem necessary and proper. The compensation for such special counsel shall be paid out of the funds appropriated for the administration of the board, commission, division, or department to be represented or whose members, officers, inspectors, investigators, or other employees are to be represented pursuant to this section.

2. In cases of legal services in civil matters to be performed for the Commonwealth, where it is impracticable or uneconomical for the Attorney General to render such service, he may employ special counsel whose compensation shall be paid out of the appropriation for the Attorney General's office.

3. In cases of legal services in civil matters to be performed for any state department, institution, division, commission, board, bureau, agency, entity, official, justice of the Supreme Court, or judge of any circuit court or district court where it is impracticable or uneconomical for the Attorney General's office to render such service, special counsel may be employed but only as set forth in subsection C of § 2.2-507, upon the written recommendation of the Attorney General, who shall approve all requisitions drawn upon the Comptroller for warrants as compensation for such special counsel before the Comptroller shall have authority to issue such warrants.

4. In cases where the Attorney General certifies to the Governor that he is unable to render certain legal services, the Governor may employ special counsel or other assistance to render such services as may be necessary.

Code 1950, § 2-88; 1966, c. 677, § 2.1-122; 1975, c. 372; 1976, c. 726; 2001, c. 844; 2002, c. 572; 2007, c. 248; 2012, c. 847; 2014, c. 824.

§ 2.2-510.1. Open negotiation for employment of special counsel

No state agency or state agent shall enter into a contingency fee contract for legal services in which contingency fees and expenses are reasonably anticipated to exceed $100,000 until an open and competitive negotiation process has been undertaken in accordance with the provisions of the Public Procurement Act (§ 2.2-4300 et seq.), applied mutatis mutandis. The contract shall be awarded to the attorney or firm that submits the most competitive proposal to provide such services considering the cost of the services, the qualifications of the attorney or firm to provide the services, the experience of the attorney or firm with similar legal matters, legal expertise generally, and such other relevant factors as may be identified by the Attorney General.

The provisions of this section shall not apply to any contracts for legal fees entered into pursuant to § 2.2-507 for the purpose of implementing the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

2002, c. 196.

§ 2.2-510.2. Employment of outside counsel where a conflict of interests exists

In cases where the Attorney General certifies to the Governor that it would be improper for the Attorney General's office to render legal services due to a conflict of interests, the Attorney

General shall negotiate an agreement with outside counsel to render the necessary legal services for the matter. The agreement shall include a reasonable fee for the necessary legal services rendered. Compensation shall be expended from funds appropriated to the Attorney General's office.

2014, c. 824.

§ 2.2-511. Criminal cases

A. Unless specifically requested by the Governor to do so, the Attorney General shall have no authority to institute or conduct criminal prosecutions in the circuit courts of the Commonwealth except in cases involving (i) violations of the Alcoholic Beverage Control Act (§ 4.1-100 et seq.), (ii) violation of laws relating to elections and the electoral process as provided in § 24.2-104, (iii) violation of laws relating to motor vehicles and their operation, (iv) the handling of funds by a state bureau, institution, commission or department, (v) the theft of state property, (vi) violation of the criminal laws involving child pornography and sexually explicit visual material involving children, (vii) the practice of law without being duly authorized or licensed or the illegal practice of law, (viii) violations of § 3.2-4212 or 58.1-1008.2, (ix) with the concurrence of the local attorney for the Commonwealth, violations of the Virginia Computer Crimes Act (§ 18.2-152.1 et seq.), (x) with the concurrence of the local attorney for the Commonwealth, violations of the Air Pollution Control Law (§ 10.1-1300 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), and the State Water Control Law (§ 62.1-44.2 et seq.), (xi) with the concurrence of the local attorney for the Commonwealth, violations of Chapters 2 (§ 18.2-18 et seq.), 3 (§ 18.2-22 et seq.), and 10 (§ 18.2-434 et seq.) of Title 18.2, if such crimes relate to violations of law listed in clause (x) of this subsection, (xii) with the concurrence of the local attorney for the Commonwealth, criminal violations by Medicaid providers or their employees in the course of doing business, or violations of Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, in which cases the Attorney General may leave the prosecution to the local attorney for the Commonwealth, or he may institute proceedings by information, presentment or indictment, as appropriate, and conduct the same, (xiii) with the concurrence of the local attorney for the Commonwealth, violations of Article 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2, (xiv) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of §§ 18.2-186.3 and 18.2-186.4, (xv) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of § 18.2-46.2, 18.2-46.3, or 18.2-46.5 when such violations are committed on the grounds of a state correctional facility, and (xvi) with the concurrence of the local attorney for the Commonwealth, assisting in the prosecution of violations of Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 of Title 18.2.

In all other criminal cases in the circuit courts, except where the law provides otherwise, the authority of the Attorney General to appear or participate in the proceedings shall not attach unless and until a petition for appeal has been granted by the Court of Appeals or a writ of error has been granted by the Supreme Court. In all criminal cases before the Court of Appeals or the

Supreme Court in which the Commonwealth is a party or is directly interested, the Attorney General shall appear and represent the Commonwealth. In any criminal case in which a petition for appeal has been granted by the Court of Appeals, the Attorney General shall continue to represent the Commonwealth in any further appeal of a case from the Court of Appeals to the Supreme Court.

B. The Attorney General shall, upon request of a person who was the victim of a crime and subject to such reasonable procedures as the Attorney General may require, ensure that such person is given notice of the filing, of the date, time and place and of the disposition of any appeal or habeas corpus proceeding involving the cases in which such person was a victim. For the purposes of this section, a victim is an individual who has suffered physical, psychological or economic harm as a direct result of the commission of a crime; a spouse, child, parent or legal guardian of a minor or incapacitated victim; or a spouse, child, parent or legal guardian of a victim of a homicide. Nothing in this subsection shall confer upon any person a right to appeal or modify any decision in a criminal, appellate or habeas corpus proceeding; abridge any right guaranteed by law; or create any cause of action for damages against the Commonwealth or any of its political subdivisions, the Attorney General or any of his employees or agents, any other officer, employee or agent of the Commonwealth or any of its political subdivisions, or any officer of the court.

Code 1950, § 2-90; 1958, c. 235; 1966, c. 677, § 2.1-124; 1974, c. 490; 1975, c. 42; 1984, c. 703; 1993, c. 866; 1995, cc. 565, 839; 1997, c. 801; 1998, cc. 507, 510; 2000, c. 239; 2001, c. 844; 2002, cc. 588, 623; 2003, c. 103; 2004, cc. 450, 883, 996; 2007, c. 409; 2009, c. 847.

§ 2.2-512. Employment of special counsel to prosecute persons illegally practicing law

Notwithstanding any other provision of law, the Attorney General may expend funds appropriated to his office for the purpose of employing special counsel to investigate and prosecute a complaint that any person is engaged in the practice of law without being duly authorized or licensed so to do or is practicing law in violation of law. The compensation of the special counsel shall be paid out of the appropriation for the Attorney General's office. No special counsel shall be employed and paid except upon the request of the Executive Committee of the Virginia State Bar.

1958, c. 235, § 2-90.1; 1966, c. 677, § 2.1-125; 1980, c. 269; 2001, c. 844.

§ 2.2-513. Counsel for Commonwealth in federal matters

The Attorney General shall represent the interests of the Commonwealth, its departments, boards, institutions and commissions in matters before or controversies with the officers and several departments of the government of the United States.

Code 1950, § 2-91; 1966, c. 677, § 2.1-126; 2001, c. 844.

§ 2.2-514. Compromise and settlement of disputes

A. (Effective until October 1, 2016) Except as provided in this section or subsection B of § 23-38.33:1, the Attorney General may compromise and settle disputes, claims and controversies involving all interests of the Commonwealth including, but not limited to the Virginia Tort

Claims Act (§ 8.01-195.1 et seq.), and may discharge any such claims, but only after the proposed compromise, settlement or discharge, together with the reasons therefor, have been submitted in writing to the Governor and approved by him. Where any dispute, claim or controversy involves the interests of any department, institution, division, commission, board, authority or bureau of the Commonwealth, the Attorney General may compromise and settle or discharge the same provided the action is approved both by the Governor, as provided in this section, and by the head, or his designee, of the department, institution, division, board, authority or bureau that is interested. However, when any dispute, claim or controversy arises under the Virginia Tort Claims Act (§ 8.01-195.1 et seq.) or otherwise involves the interests of any department, institution, division, commission, board, authority or bureau of the Commonwealth, and the settlement amount does not exceed $250,000, the Attorney General or an assistant Attorney General assigned to such department, institution, division, commission, board, authority or bureau, or such other designee of the Attorney General, may compromise and settle or discharge the same provided the action is approved by the head, or his designee, of the department, institution, division, board or bureau whose interests are in issue. When the dispute, claim or controversy involves a case in which the Commonwealth has a claim for sums due it as the result of hospital, medical or dental care furnished by or on behalf of the Commonwealth, the Attorney General or such assistant Attorney General may compromise and settle and discharge the same when the settlement amount does not exceed $250,000.

A. (Effective October 1, 2016) Except as provided in this section or former § 23-38.33:1, the Attorney General may compromise and settle disputes, claims and controversies involving all interests of the Commonwealth including, but not limited to the Virginia Tort Claims Act (§ 8.01-195.1 et seq.), and may discharge any such claims, but only after the proposed compromise, settlement or discharge, together with the reasons therefor, have been submitted in writing to the Governor and approved by him. Where any dispute, claim or controversy involves the interests of any department, institution, division, commission, board, authority or bureau of the Commonwealth, the Attorney General may compromise and settle or discharge the same provided the action is approved both by the Governor, as provided in this section, and by the head, or his designee, of the department, institution, division, board, authority or bureau that is interested. However, when any dispute, claim or controversy arises under the Virginia Tort Claims Act (§ 8.01-195.1 et seq.) or otherwise involves the interests of any department, institution, division, commission, board, authority or bureau of the Commonwealth, and the settlement amount does not exceed $250,000, the Attorney General or an assistant Attorney General assigned to such department, institution, division, commission, board, authority or bureau, or such other designee of the Attorney General, may compromise and settle or discharge the same provided the action is approved by the head, or his designee, of the department, institution, division, board or bureau whose interests are in issue. When the dispute, claim or controversy involves a case in which the Commonwealth has a claim for sums due it as the result of hospital, medical or dental care furnished by or on behalf of

the Commonwealth, the Attorney General or such assistant Attorney General may compromise and settle and discharge the same when the settlement amount does not exceed $250,000.

B. No settlement under subsection A shall be made subject to a confidentiality agreement that prohibits the Commonwealth, a state agency, officer or employee from disclosing the amount of such settlement except where such confidentiality agreement is imposed by a court of competent jurisdiction or otherwise is required by law.

C. No settlement under subsection A shall be made subject to a confidentiality agreement if such settlement requires that a matter or issue shall be the subject of (i) regulatory action pursuant to Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of this title, or (ii) legislation proposed to be introduced in the General Assembly.

Code 1950, § 2-92; 1956, c. 387; 1966, c. 677, § 2.1-127; 1973, c. 219; 1979, c. 266; 1986, c. 180; 1989, c. 75; 1995, cc. 359, 384; 2001, cc. 118, 844; 2004, c. 729; 2007, c. 217.

§ 2.2-515. Service on board of national tobacco trust entity

The Attorney General may serve in his official capacity on the board of directors of any entity established to ensure the implementation in the Commonwealth of a national tobacco trust established to provide payments to tobacco growers and tobacco quota owners to ameliorate adverse economic consequences resulting from a national settlement of states' claims against tobacco manufacturers.

2000, c. 1048, § 2.1-127.1; 2001, c. 844.

§ 2.2-515.1. Statewide Facilitator for Victims of Domestic Violence

The Attorney General shall establish a Statewide Facilitator for Victims of Domestic Violence within the Office of the Attorney General. The Statewide Facilitator shall have the responsibility to (i) establish an address confidentiality program in accordance with § 2.2-515.2, (ii) assist agencies in implementing domestic violence programs, and (iii) report on the status of such programs to the House Committee on Courts of Justice and the Senate Committee on Courts of Justice and the Virginia State Crime Commission by January 1 of each year.

2002, cc. 810, 818; 2007, c. 599; 2008, c. 649; 2011, cc. 97, 172.

§ 2.2-515.2. Address confidentiality program established; victims of domestic violence or stalking; application; disclosure of records

A. As used in this section:

"Address" means a residential street address, school address, or work address of a person as specified on the person's application to be a program participant.

"Applicant" means a person who is a victim of domestic violence or stalking or is a parent or guardian of a minor child or incapacitated person who is the victim of domestic violence or stalking.

"Domestic violence" means an act as defined in § 38.2-508 and includes threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats

have been reported to law-enforcement officers. Such threat must be a threat of force which would place any person in reasonable apprehension of death or bodily injury.

"Domestic violence programs" means public and not-for-profit agencies the primary mission of which is to provide services to victims of sexual or domestic violence or stalking.

"Program participant" means a person certified by the Office of the Attorney General as eligible to participate in the Address Confidentiality Program.

"Stalking" means conduct that is prohibited under § 18.2-60.3, regardless of whether the conduct has been reported to a law-enforcement officer or the assailant has been charged with or convicted for the alleged violation.

B. The Statewide Facilitator for Victims of Domestic Violence shall establish a program to be known as the "Address Confidentiality Program" to protect victims of domestic violence and stalking by authorizing the use of designated addresses for such victims. An individual who is at least 18 years of age, a parent or guardian acting on behalf of a minor, a guardian acting on behalf of an incapacitated person, or an emancipated minor may apply in person, at domestic violence programs that provide services where the role of the services provider is (i) to assist the eligible person in determining whether the address confidentiality program should be part of such person's overall safety plan; (ii) to explain the address confidentiality program services and limitations; (iii) to explain the program participant's responsibilities; and (iv) to assist the person eligible for participation with the completion of application materials. The Office of the Attorney General shall approve an application if it is filed in the manner and on the form prescribed by the Attorney General and if the application contains the following:

1. A sworn statement by the applicant declaring to be true and correct under penalty of perjury that the applicant has good reason to believe that:

a. The applicant, or the minor or incapacitated individual on whose behalf the application is made, is a victim of domestic violence or stalking;

b. The applicant fears further violent acts or acts of stalking from the applicant's assailant; and

c. The applicant is not on active parole or probation supervision requirements under federal, state, or local law.

2. A designation of the Office of the Attorney General as agent for the purpose of receiving mail on behalf of the applicant;

3. The applicant's actual address to which mail can be forwarded and a telephone number where the applicant can be called;

4. A listing of any minor children residing at the applicant's actual address, each minor child's date of birth, and each minor child's relationship to the applicant; and

5. The signature of the applicant and any person who assisted in the preparation of the application and the date.

C. Upon approval of a completed application, the Office of the Attorney General shall certify the applicant as a program participant. An applicant shall be certified for one year following the date of the approval, unless the certification is withdrawn or invalidated before that date. A program participant may apply to be recertified every year.

D. Upon receipt of first-class mail addressed to a program participant, the Attorney General or his designee shall forward the mail to the actual address of the program participant. The actual address of a program participant shall be available only to the Attorney General and to those employees involved in the operation of the Address Confidentiality Program and to law-enforcement officers. A program participant's actual address may be entered into the Virginia Criminal Information Network (VCIN) system so that it may be made known to law-enforcement officers accessing the VCIN system for law-enforcement purposes.

E. The Office of the Attorney General may cancel a program participant's certification if:

1. The program participant requests withdrawal from the program;

2. The program participant obtains a name change through an order of the court and does not provide notice and a copy of the order to the Office of the Attorney General within seven days after entry of the order;

3. The program participant changes his residence address and does not provide seven days' notice to the Office of the Attorney General prior to the change of address;

4. The mail forwarded by the Office of the Attorney General to the address provided by the program participant is returned as undeliverable;

5. Any information contained in the application is false;

6. The program participant has been placed on parole or probation while a participant in the address confidentiality program; or

7. The applicant is required to register as a sex offender pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1.

For purposes of the address confidentiality program, residents of temporary housing for 30 days or less are not eligible to enroll in the address confidentiality program until a permanent residential address is obtained.

The application form shall contain a statement notifying each applicant of the provisions of this subsection.

F. A program participant may request that any state or local agency use the address designated by the Office of the Attorney General as the program participant's address, except when the program participant is purchasing a firearm from a dealer in firearms. The agency shall accept the address

designated by the Office of the Attorney General as a program participant's address, unless the agency has received a written exemption from the Office of the Attorney General demonstrating to the satisfaction of the Attorney General that:

1. The agency has a bona fide statutory basis for requiring the program participant to disclose to it the actual location of the program participant; and

2. The disclosed confidential address of the program participant will be used only for that statutory purpose and will not be disclosed or made available in any way to any other person or agency.

A state agency may request an exemption by providing in writing to the Office of the Attorney General identification of the statute or administrative rule that demonstrates the agency's bona fide requirement and authority for the use of the actual address of an individual. A request for a waiver from an agency may be for an individual program participant, a class of program participants, or all program participants. The denial of an agency's exemption request shall be in writing and include a statement of the specific reasons for the denial. Acceptance or denial of an agency's exemption request shall constitute final agency action.

Any state or local agency that discloses the program participant's confidential address provided by the Office of the Attorney General shall be immune from civil liability unless the agency acted with gross negligence or willful misconduct.

A program participant's actual address shall be disclosed pursuant to a court order.

G. Records submitted to or provided by the Office of the Attorney General in accordance with this section shall be exempt from disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) to the extent such records contain information identifying a past or current program participant, including such person's name, actual and designated address, telephone number, and any email address. However, access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of a program participant in cases where the program participant is a minor child or an incapacitated person, except when the parent or legal guardian is named as the program participant's assailant.

H. Neither the Office of the Attorney General, its officers or employees, or others who have a responsibility to a program participant under this section shall have any liability nor shall any cause of action arise against them in their official or personal capacity from the failure of a program participant to receive any first class mail forwarded to him by the Office of the Attorney General pursuant to this section. Nor shall any such liability or cause of action arise from the failure of a program participant to timely receive any first class mail forwarded by the Office of the Attorney General pursuant to this section.

2007, c. 599; 2008, c. 649; 2011, cc. 97, 172; 2014, c. 439.

§ 2.2-516. Annual report

The Attorney General shall annually, on or before May 1, deliver to the Governor a report of the state and condition of all important matters in which he has represented the Commonwealth during the preceding year. He shall also include in his report the official opinions rendered by him that he believes to be of general interest or helpful in promoting uniformity in the construction of the laws of the Commonwealth.

Code 1950, § 2-93; 1966, c. 677, § 2.1-128; 1988, c. 122; 2001, c. 844.

Article 2 - DIVISION OF CONSUMER COUNSEL

§ 2.2-517. Division of Consumer Counsel created; duties

A. There is created in the Department of Law a Division of Consumer Counsel (the Division) that shall represent the interests of the people as consumers.

B. The duties of the Division shall be to:

1. Appear before governmental commissions, agencies and departments, including the State Corporation Commission, to represent and be heard on behalf of consumers' interests, and investigate such matters relating to such appearance.

2. Make such studies related to enforcing consumer laws of the Commonwealth as deemed necessary to protect the interests of the consumer and recommend to the Governor and General Assembly the enactment of such legislation deemed necessary to promote and protect the interests of the people as consumers.

C. In addition, the Division shall:

1. Establish mechanisms by which to receive complaints and related inquiries from the Commonwealth's consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such mechanisms shall include establishing a statewide, toll-free telephone hotline to be administered by the Division; publicizing the existence of such hotline through public service announcements on television and radio and in newspapers and other media deemed necessary, convenient, or appropriate; and enhancing electronic communication with the Division through the Internet;

2. Establish and administer programs that facilitate resolution of complaints and related inquiries from the Commonwealth's consumers involving violations or alleged violations of any law designed to protect the integrity of consumer transactions in the Commonwealth. Such programs may utilize paid or unpaid personnel, law schools or other institutions of higher education, community dispute resolution centers, or any other private or public entity, including any local offices of consumer affairs established pursuant to § 15.2-963 that volunteer to participate in a program;

3. Promote consumer education in cooperation with the Department of Education and inform the public of policies, decisions, and legislation affecting consumers;

4. Serve as a central coordinating agency and clearinghouse for receiving and investigating complaints by the Commonwealth's consumers of illegal, fraudulent, deceptive or dangerous practices and referring appropriate complaints to the federal, state, and local departments or agencies charged with enforcement of consumer laws;

5. Maintain records of consumer complaints and their eventual disposition, which records shall be open for public inspection, provided that information disclosing the business interests of any person, trade secrets, or the names of customers shall be held confidential except to the extent that disclosure of such matters may be necessary for the enforcement of laws; and

6. Have the authority, in the same manner as provided in § 59.1-308.2, to inquire into consumer complaints regarding violations of § 46.2-1231 or 46.2-1233.1 involving businesses engaged in towing vehicles or to refer the complaint directly to the appropriate local enforcement officials.

D. In addition, the Division may inquire into consumer complaints involving towing and recovery operators and tow truck drivers regarding violations of § 46.2-118, 46.2-1217, 46.2-1231, or 46.2-1233.1.

E. The Division, in all investigations connected with enforcing consumer laws and appearances before governmental bodies shall, on behalf of the interests of the consumer, cooperate and coordinate its efforts with such commissions, agencies and departments in ensuring that any matters adversely affecting the interests of the consumer are properly controlled and regulated. The appearance of a representative of the Division before any governmental body shall in no way limit or alter the duties of such governmental body.

F. The Attorney General may employ and fix the salaries of such attorneys, employees and consultants, within the amounts appropriated to the Attorney General for providing legal service for the Commonwealth, and other services as may be provided for by law, as he may deem necessary in the operation of the Division of Consumer Counsel to carry out its functions.

1970, c. 781, §§ 2.1-133.1, 2.1-133.3; 2001, c. 844; 2012, cc. 803, 835.

Article 3 - DIVISION OF DEBT COLLECTION

§ 2.2-518. Division of Debt Collection

A. There is created in the Department of Law a Division of Debt Collection that shall provide all legal services and advice related to the collection of funds owed to the Commonwealth, pursuant to § 2.2-507 and the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

The Attorney General may appoint and fix the salaries of such attorneys and employees as may be necessary to carry out the functions of the Division, within the amounts appropriated to the Division, and may supplement such funds from appropriations made to his office for the provision of legal services to the Commonwealth.

The Division may retain as special revenue up to 30 percent of receivables collected on behalf of state agencies and may contract with private collection agents for the collection of debts amounting to less than $15,000, as provided in the appropriation act.

B. There is hereby created on the books of the Comptroller a special, nonreverting fund to be known as the Debt Collection Recovery Fund (Fund). The Division shall deposit to the Fund all revenues generated by it, less any cost of recovery, from receivables collected on behalf of state agencies, pursuant to §§ 2.2-4805 and 2.2-4806. The Division shall transfer the remaining funds to the appropriate state agencies on a periodic basis or such other period of time approved by the Division.

C. Any direct payment received by an agency on an account that has been referred for collection to the Division shall be reported to the Division upon receipt by the agency. The agency shall cause the fees due the Division for obtaining the recovery to be reported to and paid to the Division; however, no fees shall be paid to the Division on payments to the agency resulting from the agency's participation in the Setoff Debt Collection Act, Article 21 (§ 58.1-520 et seq.) of Chapter 3 of Title 58.1. The remaining portion of the direct payment shall be retained by the agency.

1990, c. 71, § 2.1-133.4; 2001, c. 844; 2004, c. 919; 2009, c. 797.

§ 2.2-519. Prompt collection of accounts receivable

A. The Division shall oversee and ensure prompt delivery of the Commonwealth's accounts receivable in accordance with the Virginia Debt Collection Act (§ 2.2-4800 et seq.). The Division shall enforce the policies and procedures as set forth in § 2.2-4806 for reporting, accounting for, and collecting the Commonwealth's delinquent accounts receivable.

B. All agencies and institutions of the Commonwealth shall comply with all requirements established pursuant to § 2.2-4806 and by the Department of Law regarding the collection of the Commonwealth's accounts receivable.

2008, c. 637.

Article 4 - DIVISION OF HUMAN RIGHTS

§ 2.2-520. Division of Human Rights created; duties

A. There is created in the Department of Law a Division of Human Rights (the Division) to assist in the prevention of and relief from alleged unlawful discriminatory practices.

B. The duties of the Division shall be to:

1. Receive, investigate, seek to conciliate, refer to another agency, hold hearings pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.), and make findings and recommendations upon complaints alleging unlawful discriminatory practices;

2. Adopt, promulgate, amend, and rescind regulations consistent with this article pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq.). However, the Division shall not have the

authority to adopt regulations on a substantive matter when another state agency is authorized to adopt such regulations;

3. Inquire into incidents that may constitute unlawful acts of discrimination or unfounded charges of unlawful discrimination under state or federal law and take such action within the Division's authority designed to prevent such acts;

4. Seek through appropriate enforcement authorities, prevention of or relief from an alleged unlawful discriminatory practice;

5. Appoint and compensate qualified hearing officers from the list of hearing officers maintained by the Executive Secretary of the Supreme Court of Virginia;

6. Promote creation of local commissions to aid in effectuating the policies of this article and to enter into cooperative worksharing or other agreements with federal agencies or local commissions, including the deferral of complaints of discrimination to federal agencies or local commissions;

7. Make studies and appoint advisory councils to effectuate the purposes and policies of the article and to make the results thereof available to the public;

8. Accept public grants or private gifts, bequests, or other payments, as appropriate; and

9. Furnish technical assistance upon request of persons subject to this article to further comply with the article or an order issued thereunder.

1987, c. 581, § 2.1-720; 2001, c. 844, § 2.2-2634; 2004, c. 58; 2012, cc. 803, 835.

§ 2.2-521. Procedure for issuance of subpoena duces tecum

Whenever the Attorney General has reasonable cause to believe that any person has engaged in or is engaging in any unlawful discriminatory practice, he may apply to the judge of the circuit court of the jurisdiction in which the respondent resides or is doing business for a subpoena duces tecum against any person refusing to produce such data and information. The judge of the court, upon good cause shown, may cause the subpoena to be issued. Any person failing to comply with such subpoena shall be subject to punishment for contempt by the court issuing the subpoena. For purposes of this section, "person" includes any individual, partnership, corporation, association, legal representative, mutual company, joint stock company, trust, unincorporated organization, employee, employer, employment agency, labor organization, joint labor-management committee, or an agent thereof.

1987, c. 581, § 2.1-721; 2000, c. 64; 2001, c. 844, § 2.2-2635; 2012, cc. 803, 835.

§ 2.2-522. Filing with Division deemed filing with other state agencies

Filing of a written complaint with the Division of Human Rights shall be deemed filing with any state agency for the purpose of complying with any time limitation on the filing of a complaint, provided the time limit for filing with the other agency has not expired. The time limit for filing with other agencies shall be tolled while the Division is either investigating the complaint or

making a decision to refer it. Complaints under this article shall be filed with the Division within 180 days of the alleged discriminatory event.

1987, c. 581, § 2.1-722; 2001, c. 844, § 2.2-2636; 2012, cc. 803, 835.

§ 2.2-523. Confidentiality of information; penalty

A. The Division shall not make public, prior to a public hearing pursuant to § 2.2-520, investigative notes and other correspondence and information furnished to the Division in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice.

B. Nothing in this section, however, shall prohibit the distribution of information taken from inactive reports in a form that does not reveal the identity of the parties involved or other persons supplying information.

1987, c. 581, § 2.1-723; 2001, c. 844, § 2.2-2637; 2012, cc. 803, 835.

§ 2.2-524. Powers of local commissions

A local human rights or human relations commission established prior to the effective date of this article or any predecessor statute may exercise any such additional powers as may have been granted heretofore to that commission pursuant to applicable provisions of §§ 15.2-725, 15.2-853, and 15.2-854 or municipal charter provisions.

1987, c. 581, § 2.1-724; 2000, c. 933; 2001, c. 844, § 2.2-2638; 2012, cc. 803, 835.

Part C - STATE AGENCIES RELATED TO THE GENERAL OPERATION OF GOVERNMENT

Chapter 6 - GENERAL PROVISIONS

Article 1 - IN GENERAL

§ 2.2-600. Standard nomenclature to be employed

Every independent administrative entity established by law and every collegial body established by law or executive order within the executive branch of state government shall be designated according to a standard nomenclature system. The following definitions shall be applied:

"Department" means an independent administrative agency within the executive branch.

"Board" means a permanent collegial body affiliated with an agency.

"Commission" or "Council" means a permanent collegial body either affiliated with more than one agency or independent of an agency within the executive branch.

"Division," "Bureau," "Section," "Unit" or other similar titles shall be reserved for internal groupings within agencies.

"Office" means an administrative office of the Governor, Lieutenant Governor, Attorney General or a governor's secretary.

Exceptions to this standard nomenclature shall be used only for agencies and entities with unique characteristics requiring unique descriptive titles, including museums, libraries and historic or commemorative attractions.

1984, c. 393, § 2.1-1.2; 2001, c. 844.

§ 2.2-601. General powers of the departments established in this title

Each department established in this title shall have the following general powers to:

1. Employ such personnel as may be required to carry out the respective purposes for which such department was created;

2. Make and enter into contracts and agreements necessary or incidental to the performance of its duties and execution of its powers under this title;

3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, each department shall have the power to comply with the conditions and execute the agreements necessary, convenient, or desirable; and

4. Do all acts necessary or convenient to carry out the respective purposes for which the department was created.

1968, c. 223, § 2.1-63.2; 1974, c. 420, § 2.1-372; 1976, cc. 760, 761, §§ 2.1-114.4, 2.1-390; 1982, c. 345; 1984, cc. 728, 746, §§ 2.1-563.16, 2.1-708; 1985, cc. 72, 265, § 2.1-234.31; 1988, c. 839, § 2.1-738; 1995, c. 357; 1996, c. 727; 1997, c. 858; 1998, c. 808; 1999, cc. 342, 412, 421, 433; 2000, cc. 483, 491; 2001, c. 844.

§ 2.2-601.1. Certified mail; subsequent, identical mail or notices may be sent by regular mail

Whenever in this title a state agency is required to send any mail or notice by certified mail and such mail or notice is sent certified mail, return receipt requested, then any subsequent, identical mail or notice that is sent by such agency may be sent by regular mail.

As used in this section, "state agency" means the same as that term is defined in § 2.2-4347.

2011, c. 566.

§ 2.2-602. Duties of agencies and their appointing authorities

The heads of state agencies shall be the appointing authorities of the respective agencies, and shall establish and maintain within their agencies methods of administration relating to the establishment and maintenance of personnel standards on a merit basis that are approved by the Governor for the proper and efficient enforcement of the Virginia Personnel Act (§ 2.2-2900 et seq.). But the Governor shall exercise no authority with respect to the selection or tenure of office of any individual employed in accordance with such methods, except when the Governor is the appointing authority.

Appointing authorities may assign to the personnel officers or to other officers and employees of their agencies such personnel duties as they see fit.

Agencies shall establish and maintain rosters of their employees that shall set forth, as to each employee, the class title, pay and status and such other data as they may deem desirable to produce significant facts pertaining to personnel administration.

Agencies shall establish and maintain such promotion and employment lists, rated according to merit and fitness, as they deem desirable. Agencies may make use of the employment list kept by the Department of Human Resource Management in lieu of keeping employment lists for their agencies.

Agencies shall supply the Governor with any information he deems necessary for the performance of his duties in connection with the administration of Virginia Personnel Act (§ 2.2-2900 et seq.).

1976, c. 761, § 2.1-114.7; 2000, cc. 66, 657; 2001, c. 844.

§ 2.2-603. Authority of agency directors

A. Notwithstanding any provision of law to the contrary, the agency director of each agency in the executive branch of state government shall have the power and duty to (i) supervise and manage the department or agency and (ii) prepare, approve, and submit to the Governor all requests for appropriations and to be responsible for all expenditures pursuant to appropriations.

B. The director of each agency in the executive branch of state government, except those that by law are appointed by their respective boards, shall not proscribe any agency employee from discussing the functions and policies of the agency, without prior approval from his supervisor or superior, with any person unless the information to be discussed is protected from disclosure by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or any other provision of state or federal law.

C. Subsection A shall not be construed to restrict any other specific or general powers and duties of executive branch boards granted by law.

D. This section shall not apply to those agency directors that are appointed by their respective boards or by the Board of Education. Directors appointed in this manner shall have the powers and duties assigned by law or by the board.

E. In addition to the requirements of subsection C of § 2.2-619, the director of each agency in any branch of state government shall, at the end of each fiscal year, report to (i) the Secretary of Finance and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance a listing and general description of any federal contract, grant, or money in excess of $1,000,000 for which the agency was eligible, whether or not the agency applied for, accepted, and received such contract, grant, or money, and, if not, the reasons therefore and the dollar amount and corresponding percentage of the agency's total annual budget that was supplied by funds from the federal government and (ii) the Chairmen of the House Committees on Appropriations and

Finance, and the Senate Committee on Finance any amounts owed to the agency from any source that are more than six months delinquent, the length of such delinquencies, and the total of all such delinquent amounts in each six-month interval. Clause (i) shall not be required of public institutions of higher education.

F. Notwithstanding subsection D, the director of every agency and department in the executive branch of state government, including those appointed by their respective boards or the Board of Education, shall be responsible for securing the electronic data held by his agency or department and shall comply with the requirements of the Commonwealth's information technology security and risk-management program as set forth in § 2.2-2009.

G. The director of every department in the executive branch of state government shall report to the Chief Information Officer as described in § 2.2-2005, all known incidents that threaten the security of the Commonwealth's databases and data communications resulting in exposure of data protected by federal or state laws, or other incidents compromising the security of the Commonwealth's information technology systems with the potential to cause major disruption to normal agency activities. Such reports shall be made to the Chief Information Officer within 24 hours from when the department discovered or should have discovered their occurrence.

1985, c. 212, § 2.1-20.01:1; 1992, c. 672; 1995, c. 219; 1996, c. 98; 1997, c. 491; 1999, cc. 70, 892; 2001, c. 844; 2004, cc. 488, 638; 2015, cc. 261, 768.

§ 2.2-604. Performance of duties assigned to an agency

The chief executive officer shall be responsible for any duty or task imposed upon his agency. The chief executive officer may delegate or assign to any officer or employee of his agency any tasks required to be performed by him or the agency and, in the case of an agency with a supervisory board, such board may delegate or assign the tasks. Except as otherwise provided by law, the chief executive officer may also delegate to any officer or employee of any state or quasi-state agency nondiscretionary duties conferred or imposed upon the chief executive officer or his agency by law where the delegation of duties is necessary to achieve efficiency and economy in the administration of government. The chief executive officer or supervisory board delegating or assigning tasks shall remain responsible for the performance of such tasks.

Any delegation pursuant to this section shall, where appropriate, be accompanied by written guidelines for the exercise of the tasks delegated. Where appropriate, the guidelines shall require that agency heads receive summaries of actions taken. Such delegation shall not relieve the chief executive officer or supervisory board of the responsibility to ensure faithful performance of the duties and tasks.

1988, c. 273, § 2.1-20.01:2; 2001, c. 844; 2005, c. 839.

§ 2.2-604.1. Designation of officials; interests of senior citizens and adults with disabilities

The head of each state agency shall designate an existing employee who shall be responsible for reviewing policy and program decisions under consideration by the agency in light of the effect of

such decisions on senior citizens and adults with disabilities. The designated employee shall advise and alert the agency head of opportunities to make policies, programs, and regulations senior-friendly and disability-friendly.

2006, c. 345.

§ 2.2-605. Appointment of acting officer in case of temporary disability

When any officer in charge of or at the head of any division or department of the state government shall, because of sickness or for any other reason, be unable to perform the duties of his office and no provision is made for someone, or for the appointment of someone, to exercise the powers and perform the duties of such office while the officer is sick or unable to act, the Governor may appoint some person temporarily to fill such office as acting head or in charge of such division or department, who shall after qualifying exercise the powers and perform the duties of such office until the incumbent returns or the office is otherwise filled.

Code 1950, § 2-16; 1966, c. 677, § 2.1-20; 2001, c. 844.

§ 2.2-606. Consideration of certain issues in policy development

In the formulation and implementation of policies and regulations, each department and division of the executive branch and those boards affiliated with a state agency within the executive branch of state government shall consider the impact of the policies and regulations on family formation, stability, and autonomy. This section shall not be construed to confer a right or benefit, substantive or procedural, enforceable at law or in equity by any party against the Commonwealth, its agencies, officers, or any other person.

1995, c. 530, § 2.1-7.2; 2001, c. 844.

§ 2.2-607. Reporting transfers of personnel; granting reports

A. Whenever a state employee is transferred for a limited period of time from one state agency to another without transferring appropriations, as may be provided by law, the transfer shall be reported by the transferring agency to the Department of Human Resource Management, including the name and classification of the employee, the name of the transferring and receiving agencies and the length of time of transfer. If, at a subsequent time, the length of time is shortened or extended, a subsequent report of that fact shall also be submitted.

B. A consolidated report of all current transfers and all that have begun and ended within the preceding three-month period shall be prepared as of the first day of each January, April, July and October. A copy of each report shall be submitted to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance and the Director of the Department of Planning and Budget no later than three working days after the effective date of the report.

1982, c. 414, § 2.1-114.7:1; 2000, cc. 66, 657; 2001, c. 844.

§ 2.2-608. Furnishing reports; Governor authorized to require reports

A. Agencies, institutions, collegial bodies, and other governmental entities that are specifically required by the Code of Virginia to report annually or biennially to the Governor and General Assembly shall post such annual or biennial reports on the respective entity's website on or before October 1 of each year, unless otherwise specified. No hard copies of annual and biennial reports shall be printed except in instances where copies are requested by a member of the General Assembly in accordance with the provisions of § 30-34.4:1. The Governor may require any agency to furnish an annual or biennial report in a written or electronic format.

B. Each state entity required to submit a report to multiple legislative branch entities pursuant to subsection C may develop a single consolidated report in a written or electronic format containing the required information. Such report shall be (i) formatted to comply with any specific reporting requirement, and (ii) provided in a manner designed to clearly delineate each legislative branch entity for which specific information is provided.

C. Any agency, institution, collegial body, or other governmental entity outside of the legislative branch of government required to submit a report to the General Assembly or any committee, subcommittee, commission, agency, or other body within the legislative branch or to the chairman or agency head of such entity shall distribute a hard copy of such report to each member of the General Assembly who requests a copy in accordance with the provisions of § 30-34.4:1. A consolidated report developed pursuant to subsection B shall satisfy any reporting requirement under this subsection. The cost of printing and distributing reports shall be borne by the reporting entity or its supporting agency.

1984, c. 734, § 2.1-2.1; 2001, c. 844; 2004, c. 650; 2009, c. 550; 2011, c. 845; 2012, c. 434.

§ 2.2-609. Copies of state publications furnished to Librarian of Virginia

A. Pursuant to the State Publications Depository Program (§ 42.1-92 et seq.), every agency, institution, collegial body, or other state governmental entity of any branch of government shall furnish a maximum of 20 copies of each of its publications, as defined in § 42.1-93, or, if authorized by the Library, other publication information as may be designated by the Library to facilitate the acquisition and distribution of publications, regardless of physical form or characteristics.

B. Every agency, institution, collegial body, or other state governmental entity of any branch of government shall provide information requested by the Library to assist in the publication of an annual catalog of state agency publications as required by § 42.1-95 of the State Publications Depository Program.

C. For purposes of this section, "Library" means The Library of Virginia.

1977, c. 672, §§ 2.1-467.2, 2.1-467.4; 1979, c. 403; 1981, c. 234; 1992, c. 181; 1994, c. 64; 1998, c. 427; 2001, c. 844; 2004, cc. 28, 152; 2006, c. 59.

§ 2.2-610. Furnishing copies of documents at no cost to law-enforcement officials

All agencies and instrumentalities of the Commonwealth shall provide, at no cost, copies of documents requested by the Department of State Police or other law-enforcement officers as part of an active criminal investigation.

"Law-enforcement officer" means the same as that term is defined in § 9.1-101.

1997, c. 44, § 2.1-2.2; 2001, c. 844.

§ 2.2-611. Acceptance by departments, etc., of funds from United States; application of funds

A. Any department, agency, bureau or institution of the Commonwealth may (i) accept grants of funds made by the United States government or any department or agency thereof, to be applied to purposes within the functions of such state department, agency, bureau or institution, and (ii) administer and expend such funds for the purposes for which they are granted.

B. The State Treasurer is appointed custodian of all such funds, and shall disburse them on warrants issued by the Comptroller for the department, agency, bureau or institution for whose use they are granted.

Code 1950, §§ 2-3, 2-4; 1966, c. 677, §§ 2.1-3, 2.1-4; 2001, c. 844.

§ 2.2-612. Notification to localities of reduction or discontinuation of service

A. No agency, board, commission or other entity of the Commonwealth shall take any action to reduce or discontinue a service that it performs for a local government or reduce or discontinue any form of financial assistance to a local government without first notifying all affected local governments at least 90 days in advance of the proposed action. However, in emergencies, certified by the Governor for executive branch agencies or by the chief administrative officer for any other entity of the Commonwealth, such action may be taken immediately following the notice.

B. The provisions of subsection A shall not apply to any action taken by an executive branch agency or other entity of the Commonwealth pursuant to a specific legislative requirement, agreement or contract negotiated with a local government, the application of a statute prescribing periodic adjustments in state financial assistance, workforce reduction resulting from diminished appropriation or legislated early retirement provisions, or judicial decree.

C. Nothing in subsection A shall apply to any officer who receives funding under § 15.2-1636.7 or who may appeal Compensation Board budget decisions under § 15.2-1636.9 or § 15.2-1636.10, or to those payments made to localities in accordance with §§ 53.1-20.1, 53.1-83.1, 53.1-84, or § 53.1-85.

1997, c. 859, § 2.1-7.3; 2001, c. 844; 2004, cc. 34, 155.

§ 2.2-613. Agency mandates on localities; assessment

Pursuant to § 15.2-2903, all agencies, as defined in § 2.2-128, shall conduct an assessment of all mandates imposed on local governments administered by the agency to determine which mandates, if any, may be altered or eliminated. With respect to state mandates imposed on local

governments, such assessments shall include an estimate of the fiscal impact of the mandates on the affected local governments in addition to a written justification as to why the mandate should or should not be eliminated.

1993, c. 652, § 2.1-7.1; 2001, c. 844; 2011, cc. 737, 741.

§ 2.2-614. Purebred livestock raised by state institutions and agencies may be sold instead of slaughtered

The person in charge of any state institution or agency that raises purebred livestock may, when any of the livestock are to be slaughtered, sell the same to any person desiring to acquire the livestock for breeding purposes, provided the interests of the institution or agency will not be adversely affected by the sale.

1958, c. 586, § 2-4.3; 1966, c. 677, § 2.1-7; 2001, c. 844.

§ 2.2-614.1. Authority to accept revenue by commercially acceptable means; service charge; bad check charge

A. Subject to § 19.2-353.3, any public body that is responsible for revenue collection, including, but not limited to, taxes, interest, penalties, fees, fines or other charges, may accept payment of any amount due by any commercially acceptable means, including, but not limited to, checks, credit cards, debit cards, and electronic funds transfers.

B. The public body may add to any amount due a sum, not to exceed the amount charged to that public body for acceptance of any payment by a means that incurs a charge to that public body or the amount negotiated and agreed to in a contract with that public body, whichever is less. Any state agency imposing such additional charges shall waive them when the use of these means of payment reduces processing costs and losses due to bad checks or other receivable costs by an amount equal to or greater than the amount of such additional charges.

C. If any check or other means of payment tendered to a public body in the course of its duties is not paid by the financial institution on which it is drawn, because of insufficient funds in the account of the drawer, no account is in the name of the drawer, or the account of the drawer is closed, and the check or other means of payment is returned to the public body unpaid, the amount thereof shall be charged to the person on whose account it was received, and his liability and that of his sureties, shall be as if he had never offered any such payment. A penalty of $35 or the amount of any costs, whichever is greater, shall be added to such amount. This penalty shall be in addition to any other penalty provided by law, except the penalty imposed by § 58.1-12 shall not apply.

2002, c. 719; 2004, c. 565.

§ 2.2-614.2. Participation in the REAL ID Act of 2005

A. For purposes of this section, the following words and phrases shall have the meanings respectively ascribed to them in this section except in those instances where the context clearly indicates a different meaning:

"Biometric data" means information relating to a biological characteristic of an individual that makes that individual unique from any other individual, including, but not limited to, the following:

1. Fingerprints, palm prints, and other means for measuring or recording ridge pattern or fingertip characteristics;

2. Facial feature pattern characteristics;

3. Behavior characteristics of a handwritten signature, such as shape, speed, pressure, pen angle, or sequence;

4. Voice data used for comparing live speech with a previously created speech model of an individual's voice;

5. Iris recognition data containing color or texture patterns or codes;

6. Keystroke dynamics, measuring pressure applied to key pads;

7. Hand geometry, measuring hand characteristics, including the shape and length of fingers, in three dimensions;

8. Retinal scans, reading through the pupil to measure blood vessels lining the retina; and

9. Deoxyribonucleic acid or ribonucleic acid.

"Biometric samples" means anything used as a source to develop, create, or extract biometric data.

"Economic privacy" means the privacy of an individual that relates to a right, privilege, or reasonable expectation that certain information is required by law to be held confidential or is otherwise considered to be confidential to that individual, including, but not limited to:

1. Information included in a tax return required by law to be filed with the federal, state, or local government;

2. Information on financial transactions conducted by or on behalf of the individual; and

3. Information on investment transactions conducted by or on behalf of the individual.

"REAL ID Act of 2005" means Division B of the Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005 (P.L. 109-13, 119 Stat. 302).

B. With the exception of identification cards issued to employees of the Department of State Police and any other law-enforcement officer employed by any agency of the Commonwealth, neither the Governor nor the Department of Motor Vehicles nor any other agency of the Commonwealth shall comply with any provision of the REAL ID Act of 2005 that they determine would compromise the economic privacy, biometric data, or biometric samples of any resident of the Commonwealth.

2009, cc. 733, 769.

§ 2.2-614.2:1. Assisting U.S. armed forces in detention of citizen

Notwithstanding any contrary provision of law, no agency of the Commonwealth as defined in § 8.01-385, political subdivision of the Commonwealth as defined in § 8.01-385, employee of either acting in his official capacity, or member of the Virginia National Guard or Virginia Defense Force, when such a member is serving in the Virginia National Guard or the Virginia Defense Force on official state duty, shall knowingly aid an agency of the armed forces of the United States in the detention of any citizen pursuant to 50 U.S.C. § 1541 as provided by the National Defense Authorization Act for Fiscal Year 2012 (P.L. 112-81, § 1021) if such aid would knowingly place any state agency, political subdivision, employee of such state agency or political subdivision, or aforementioned member of the Virginia National Guard or the Virginia Defense Force in violation of the United States Constitution, the Constitution of Virginia, any provision of the Code of Virginia, any act of the General Assembly, or any regulation of the Virginia Administrative Code.

The provisions of this section shall not apply to participation by state or local law enforcement or Virginia National Guard or Virginia Defense Force in joint task forces, partnerships, or other similar cooperative agreements with federal law enforcement as long as they are not for the purpose of participating in such detentions under § 1021 of the National Defense Authorization Act for Fiscal Year 2012.

2012, c. 792.

§ 2.2-614.3. Charitable organization; certain government action prohibited

A government agency shall not require any charitable organization to:

1. Disclose individual demographic information concerning employees, officers, directors, trustees, members, or owners, without the prior written consent of such individuals;

2. Disclose individual demographic information concerning any person, or the employees, officers, directors, trustees, members or owners of any entity that has received monetary or in-kind contributions from or contracted with a charitable organization without the prior written consent of such individuals;

3. Include in the membership of the governing board or officers of the charitable organization an individual based on his demographic characteristics;

4. Prohibit an individual from serving as a board member or officer based upon the individual's familial relationship to other board members or officers or to a donor;

5. Include in the membership of the governing board one or more individuals who do not share a familial relationship with other board members or officers or with the donor; or

6. Distribute its funds to or contract with any individual or entity based upon the demographic characteristics of the employees, officers, directors, trustees, members, or owners of the individual or entity, or based on populations, locations, or communities served by the individual or entity, except as a lawful condition on the expenditure of the funds imposed by the donor.

As used in this section:

"Charitable organization" means any nonstock corporate or other entity that has been granted tax-exempt status under § 509(a) of the Internal Revenue Code .

"Government agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government and any county, city, or town.

Nothing in this section shall prohibit a government agency from obtaining information from a charitable organization pursuant to a subpoena, civil investigative demand, or other compulsory process. Nothing in this section shall alter or limit the filing requirements applicable to charitable organizations under Chapter 8 (§ 18.2-325 et seq.) of Title 18.2 or Chapter 5 (§ 57-48 et seq.) of Title 57.

2011, c. 873.

§ 2.2-614.4. Commercial activities list; publication of notice; opportunity to comment

A. As used in this section, unless the context requires a different meaning:

"Commercial activities list" means the list developed by the Department of Planning and Budget in accordance with § 2.2-1501.1.

"Governmental agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government and any county, city, or town or local or regional governmental authority.

B. Any state governmental agency that intends to purchase services for an amount over $25,000 from another governmental agency, which service is found on the commercial activities list, shall post notice on the Department of General Services' central electronic procurement system under the "Future Procurement" listing.

C. Any local governmental agency that intends to purchase services for an amount over $25,000 from another governmental agency, which service is found on the commercial activities list, shall post notice on its public government website where all public notices for procurement opportunities are located or on the Department of General Services' central electronic procurement system under the "Future Procurement" listing.

D. In addition to the notice requirement in subsection C, any such governmental agency shall provide the opportunity for comment by or the submission of information from the private sector on each such intended purchase.

E. (Effective until October 1, 2016) Any state governmental agency that purchases goods or services from another governmental agency, including those found on the commercial activities list, shall place the purchase orders for such goods and services on the Department of General Services' central electronic procurement system. Institutions of higher education authorized in accordance with the Restructured Higher Education Financial and Administrative Operations Act (§ 23.38.88

et seq.) shall provide government-to-government purchase order data through interface or integration with the Department of General Services' central electronic procurement system. The Department of General Services shall publish on its central electronic procurement system website a government-to-government transaction transparency report.

E. (Effective October 1, 2016) Any state governmental agency that purchases goods or services from another governmental agency, including those found on the commercial activities list, shall place the purchase orders for such goods and services on the Department of General Services' central electronic procurement system. Institutions of higher education authorized in accordance with the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.) shall provide government-to-government purchase order data through interface or integration with the Department of General Services' central electronic procurement system. The Department of General Services shall publish on its central electronic procurement system website a government- to-government transaction transparency report.

F. The provisions of this section shall not apply to mandatory purchases pursuant to § 53.1-47 or contracts specifically exempted pursuant to Article 3 (§ 2.2-4343 et seq.) of the Virginia Public Procurement Act.

G. The provisions of subsections B and C shall not apply to services provided by central service state agencies, activities operated as an internal service fund of the Commonwealth, or purchases from public institutions of higher education.

2015, c. 736; 2016, c. 680.

Article 2 - IMPLEMENTATION OF FEDERAL MANDATES ACT

§ 2.2-615. Short title

This chapter shall be known and may be cited as the "Implementation of Federal Mandates Act".

1995, c. 604, § 2.1-795; 2001, c. 844.

§ 2.2-616. Legislative declaration

A. In enacting this chapter, the General Assembly employs its legislative authority to establish that the people of Virginia, acting through their elected officials in Virginia government, have the responsibility and authority to establish policy in and for Virginia pertaining to federal programs mandated in federal statutes.

B. The intent of the General Assembly is to assure the primacy of the Commonwealth's legal and political authority to implement in and for Virginia the policy mandated by federal statutes and to vigorously challenge and scrutinize the extent and scope of authority asserted by federal executive branch agencies when federal agency actions and interpretations are inconsistent with Virginia policy and exceed the lawful authority of the federal government or are not required by federal law.

C. In this connection the General Assembly finds and declares that:

1. The power to implement federal policies in and for Virginia is central to the ability of the people of Virginia to govern themselves under a federal system of government; and

2. Any implementation of federal policies in and for Virginia by federal executive branch agencies that is contrary to fundamental notions of federalism and self-determination must be identified and countered.

D. The General Assembly further finds and declares that:

1. There is an urgent need to modify federal mandates because the implementation of these mandates by the Commonwealth wastes the financial resources of local governments, the citizens of Virginia and the Commonwealth and does not properly respect the rights of the Commonwealth, local governments, and citizens.

2. The state government has an obligation to the public to do what is necessary to protect the rights of Virginia citizens under federal law while minimizing or eliminating any additional cost or regulatory burden on any citizen of the Commonwealth.

3. The Tenth Amendment to the United States Constitution directs that powers that are not delegated to the United States are reserved to the states or to the people. Virginia, as one of the sovereign states within the Union, has constitutional authority to enact laws protecting the environment of the Commonwealth and safeguarding the public health, safety, and welfare of the citizens of Virginia. However, this authority has too often been ignored by the federal government, as the federal government has intruded more and more into areas that must be left to the states. It is essential that the dilution of the authority of state and local governments be halted and that the provisions of the Tenth Amendment be accorded proper respect.

4. Current federal regulatory mandates, as reflected in federal administrative regulations, guidelines, and policies, often do not reflect the realities of Virginia and federal regulators frequently do not understand the needs and priorities of the citizens of Virginia.

5. The citizens of the Commonwealth can create and wish to create innovative solutions to Virginia's problems, but the current manner in which legal challenges to state policies and federal programmatic substitutions of state programs are handled does not allow the Commonwealth the flexibility it needs. It is not possible for the Commonwealth of Virginia to effectively and efficiently implement the provisions of federal statutes unless the burden to prove the insufficiency of the Commonwealth's efforts to implement federal requirements is shifted to the person or agency who asserts such insufficiency.

6. The provisions of this chapter will better balance the exercise of the powers of the federal government and the powers reserved to the states. In addition, the application of this chapter ultimately will bring about greater protection for the Commonwealth and the nation because it will direct the Commonwealth to implement federal statutes at the least possible cost, thereby freeing more moneys for other needs.

7. The purpose of this chapter is to ensure that federal mandates implemented in Virginia comply with state policy as established by the General Assembly.

1995, c. 604, § 2.1-796; 2001, c. 844.

§ 2.2-617. Definitions

As used in this chapter, unless the context requires otherwise:

"Federal statute" means a federal statute that is in accord with the United States Constitution imposing mandates on state or local governments, which may include, but is not limited to, the following:

1. The Safe Drinking Water Act, 42 U.S.C. § 300f, et seq., as amended;

2. The Clean Air Act, 42 U.S.C. § 7401, et seq., as amended;

3. The Federal Water Pollution Control Act, 33 U.S.C. § 1251, et seq., as amended;

4. The Solid Waste Disposal Act, 42 U.S.C. § 3251, et seq., as amended;

5. The Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended;

6. The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, et seq., as amended;

7. The Superfund Amendments and Reauthorization Act of 1986, P.L. 99-499, as amended;

8. The Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended;

9. The Asbestos School Hazard Abatement Statute, 20 U.S.C. § 4011, et seq., as amended;

10. The Brady Handgun Violence Prevention Act of 1993, P.L. 101-336, as amended;

11. The Commercial Motor Vehicle Safety Act of 1986, 49 U.S.C. § 2501, et seq., as amended;

12. The Family and Medical Leave Act of 1993, P.L. 103-3, as amended;

13. The Emergency Planning and Community Right-to-Know Act, P.L. 99-145 and 99-499, as amended;

14. The Federal, State, and Local Partnership for Education Improvement Program, 20 U.S.C. § 1751, et seq., as amended;

15. The National Voter Registration Act of 1993, P.L. 103-31, as amended;

16. The Federal School Lunch Program and School Breakfast Program, 42 U.S.C. §§ 1751 and 1773, P.L. 101-336, as amended;

17. The Federal Social Services and Medicaid Requirements, 42 U.S.C. § 1396, et seq., as amended;

18. The Federal Highway Safety Programs; and

19. The Intermodal Surface Transportation Efficiency Act of 1991, P.L. 102-240, as amended.

1995, c. 604, § 2.1-797; 2001, c. 844.

§ 2.2-618. State programs to implement federal statutes

Any agency of the executive branch of state government that is authorized to develop a state program to implement any mandates contained in a federal statute shall develop the state program and adopt any necessary regulations using the following criteria:

1. State programs shall be developed by the agency to meet the requirements of federal statutes in good faith with a critical view toward any federal regulations, guidelines, or policies.

2. State programs shall be developed with due consideration of the financial restraints of the Commonwealth, local governments, and the citizens of Virginia.

3. Any state program that implements the goals of the federal statute shall use the most efficient method possible with careful consideration given to cost of the program and the impact of the program on Virginia citizens and local governments, and the long-range public health, safety, and welfare of citizens of the Commonwealth.

1995, c. 604, § 2.1-798; 2001, c. 844.

§ 2.2-619. Governor to report to the General Assembly

A. The Governor shall report to the General Assembly regarding the proposed implementation of this section.

B. If any state program is authorized or mandated by a federal statute, no state funds for the program shall be appropriated unless:

1. The state program is necessary to protect the public health, safety, and welfare;

2. The state program is necessary to implement the federal statute;

3. The operation of the state program benefits the state by providing a cost-effective implementation of the federal statute by the Commonwealth, local government, and business; or

4. The state program benefits the Commonwealth, local government, and business by providing a cost-effective means to meet a higher public health, safety, and welfare standard established under state law.

C. Each agency making a budget request for state appropriations for a state program authorized or mandated by federal statute shall include in its budget request citations to the federal constitutional provisions and the state constitutional or statutory provisions that authorize the state program. The Governor shall review the budget request and determine whether additional state statutory authority is required in order to implement the state program and shall make recommendations to the General Assembly.

D. The General Assembly, after receiving a recommendation from the Governor, shall determine whether a state program is necessary and whether federal constitutional authority and state constitutional or statutory authority exist. The General Assembly shall review toward the interpretation of the federal statute found in federal regulations, guidelines, or policies. Appropriation

of state funds for a state program shall constitute the General Assembly's determination that the state program is necessary and that federal constitutional authority and state constitutional or statutory authority exist. State appropriations may not be based solely on requirements found in regulations, guidelines, or policies of a federal agency.

E. Prior to recommending to the General Assembly any budget for an agency that is charged with implementing federal mandates, the Governor shall request that the agency provide information to the Department of Planning and Budget regarding any monetary savings for the state and any reduction in regulatory burdens on the public and on local governments that could be or have been achieved through the development of state policies that meet the intent of the federal statute but do not necessarily follow all applicable federal regulations, guidelines, or policies. The agency shall also provide advice to the Department of Planning and Budget regarding any changes in law that are necessary to provide the agency with the authority to implement state policies in such a way as to create additional savings or greater reductions in regulatory burdens. The Department of Planning and Budget shall review and compile the information received from agencies pursuant to this section and shall include recommendations in the executive budget.

F. For purposes of this section, "state program" shall not include any portion of a program that is funded with nontax or nonfee revenue, or both, which state authorities are required to administer in a trusteeship or custodial capacity and that are not subject to appropriation by the General Assembly.

1995, c. 604, § 2.1-799; 2001, c. 844.

§ 2.2-620. Establishment of the Capitol District as the seat of government of the Commonwealth

A. For administrative purposes, the area that encompasses the seat of government of the Commonwealth shall be referred to as the "Capitol District."

B. The term "Capitol District" shall be geographically defined as the area in Richmond, Virginia, contained within the centerline of East Broad Street between its intersections with the centerline of Eighth Street and the Interstate 95 overpass, the centerline of Eighth Street between its intersections with the centerlines of East Broad Street and Main Street, the centerline of Main Street between its intersections with the centerline of Eighth Street and the Interstate 95 overpass, and the overpass of Interstate 95 between its intersections with the centerlines of East Broad Street and Main Street, and all buildings and property owned or leased by the Commonwealth within such area.

C. Nothing in this section shall be construed to restrict (i) the authority of the legislative, executive, or judicial branch of state government in the administration of its employees or facilities within the Capitol District or to grant any additional authority or responsibility to any government agency or entity (ii) the law-enforcement authority of the police department of the City of Richmond within the Department's jurisdiction.

2008, c. 548.

§ 2.2-621. Grants by the Commonwealth; certification of employment
Every state agency may require as a condition of receiving any grant or other incentive that is based on employment goals, a recipient company must provide copies of employer quarterly payroll reports that have been provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal.

As used in this section, "state agency" means the same as that term is defined in § 2.2-4347.

2013, c. 547.

Chapter 7 - DEPARTMENT FOR THE AGING [Repealed]

§§ 2.2-700 through 2.2-720. Repealed
Repealed by Acts 2012, cc. 803 and 835, cl. 60.

Chapter 8 - DEPARTMENT OF ACCOUNTS

Article 1 - GENERAL PROVISIONS

§ 2.2-800. Department of Accounts created; appointment of Comptroller; oath
A. There is created a Department of Accounts (the "Department"). The Director of the Department shall be known as the Comptroller. He shall be appointed by the Governor to serve at his pleasure.

B. The Comptroller shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

C. The Comptroller, before entering upon the discharge of his duties, shall take an oath that he will faithfully and honestly execute the duties of his office.

Code 1950, §§ 2-160, 2-161; 1958, c. 124; 1966, c. 677, §§ 2.1-192, 2.1-194; 1976, c. 728; 1984, c. 720; 2001, c. 844.

§ 2.2-801. Comptroller to appoint administrative assistants, etc
A. The Comptroller shall appoint the administrative assistants, deputies and clerks allowed by law.

B. The Comptroller shall appoint administrative assistants, who shall have authority to act for and perform the duties of the Comptroller under his direction, supervision and control, and in the absence of the Comptroller to perform all the duties of the office. Of such absence, the others shall be informed. When the absence of the Comptroller is to be for more than five days at a time, notice thereof shall be given to the Governor.

C. In the event the administrative assistant is incapacitated from performing his duties during the absence of the Comptroller, the Governor shall designate some other person in the office to act during the absence of the Comptroller, and in the event of the removal, resignation or death of

the Comptroller, the administrative assistant shall perform all the duties of the office until the vacancy is filled in the manner prescribed by law.

D. Such officers and their sureties shall be liable for any default or breach of duty of their administrative assistants respectively during their absence.

1950, §§ 2-145, 2-146, 2-147, 2-148; 1966, c. 677, §§ 2.1-173, 2.1-174, 2.1-175, 2.1-176; 2001, c. 844.

§ 2.2-802. General accounting and clearance through Comptroller

In the Department the Comptroller shall maintain a complete system of general accounting to comprehend the financial transactions of every state department, division, officer, board, commission, institution or other agency owned or controlled by the Commonwealth, whether at the seat of government or not. All transactions in public funds shall clear through the Comptroller's office.

Code 1950, § 2-162; 1958, c. 124; 1966, c. 677, § 2.1-195; 2001, c. 844.

§ 2.2-803. Financial accounting and control

A. Unified financial accounting and control shall be established through the departments and agencies of the Commonwealth, in the manner prescribed in this chapter.

The Comptroller shall prescribe what accounts shall be kept by each state agency in addition to the system of general accounting maintained in the Comptroller's office. In prescribing what accounts shall be kept by each state agency, the Comptroller shall take care that there shall be no unnecessary duplication.

B. The Comptroller shall direct the development of a modern, effective and uniform system of bookkeeping and accounting, to include (i) an efficient system of checks and balances between the officers at the seat of the government entrusted with the collection and receipt, custody and disbursement of the revenues of the Commonwealth; and (ii) a system of accounting, applicable to all state officers, departments, boards, commissions, agencies, and penal, educational and eleemosynary institutions maintained in whole or in part by the Commonwealth, which shall be suitable to their respective needs, considering their relation to each other and their relation to subordinate officers and officials. All systems so developed shall require the approval and certification of the Auditor of Public Accounts that they are adequate for purposes of audit and financial control.

As to the collection of debts owed, the system of bookkeeping and accounting shall permit any state agency to refrain from collecting any amount owed to it if the administrative cost of collection likely would exceed the amount owed. The Comptroller shall develop other policies and procedures to reduce the costs of collecting debts owed to state agencies.

As to the operation of merchandising activities, or other centralized support services provided by one state agency to other state agencies for which charges are made, the system of accounting shall be designed to reflect all charges properly allocable so that the net profit or loss therefrom

shall be reflected. In the furtherance of this objective the Joint Legislative Audit and Review Commission may direct the Comptroller to establish under such terms and conditions as they may determine internal service fund accounts on his books and record therein the receipts and expenditures of these several functions. The Comptroller shall provide the agencies responsible for the operations of these functions with working capital advances with which to finance the operations pursuant to appropriations made by law. The Joint Legislative Audit and Review Commission may direct the Comptroller to transfer excess fund balances to the general fund or to remove from his books internal service fund accounts that are no longer considered appropriate and record the necessary transfer of funds.

Unit prices of services rendered by internal service funds shall be fixed so that all costs properly allocable to providing the service shall be fully recoverable.

C. The Comptroller shall maintain a full explanation of all systems of accounting devised and adopted in furtherance of this section, but no copyright system shall be adopted that shall entail additional cost upon the Commonwealth by reason of such copyright. The systems of accounting shall be communicated by the Comptroller to the officials affected thereby, and he shall as soon as possible instruct the officials as to the systems of accounting.

D. Should any of the state offices, departments, boards, commissions, agencies, or institutions refuse or neglect to adopt the systems of accounting developed by the Comptroller, then upon suit of the Attorney General a writ of mandamus will lie to the Supreme Court to compel the adoption. It shall be the duty of the Attorney General to promptly institute such suit in any such case.

1975, c. 323, § 2.1-196.1; 1976, c. 533; 1984, c. 612; 2001, c. 844; 2006, c. 340.

§ 2.2-803.1. Processing of payroll and other transactions by certain institutions of higher education

A. The College of William and Mary; George Mason University; James Madison University; Old Dominion University; the University of Virginia, including the College at Wise; Virginia Commonwealth University; Virginia Military Institute; and Virginia Polytechnic Institute and State University shall each process the payroll of its respective college or university employees as provided in the memoranda of understanding between the Department of Accounts and each such institution implementing a pilot program granting relief from rules, regulations, and reporting requirements pursuant to subdivision E 1 of Item 330 of Chapter 966 of the Acts of Assembly of 1994 as continued in effect by subsection B of Item 271 of Chapter 899 of the Acts of Assembly of 2002 .

B. The College of William and Mary; George Mason University; James Madison University; Old Dominion University; Radford University; the University of Virginia, including the College at Wise; Virginia Commonwealth University; Virginia Military Institute; and Virginia Polytechnic Institute and State University shall each process its respective nonpayroll disbursements, receipts, and expenditures as provided in the memoranda of understanding between the Department of

Accounts and each such institution implementing a pilot program granting relief from rules, regulations, and reporting requirements pursuant to subdivision E 1 of Item 330 of Chapter 966 of the Acts of Assembly of 1994 as continued in effect by subsection B of Item 271 of Chapter 899 of the Acts of Assembly of 2002 . "Nonpayroll disbursements, receipts, and expenditures" shall include all disbursements, receipts, and expenditures, other than payroll as described in subsection A. Such disbursements, receipts, and expenditures shall include, but are not limited to, travel reimbursements, revenue refunds, cash receipts, disbursements for vendor payments, petty cash, and interagency payments.

2003, c. 457.

§ 2.2-804. Recovery of certain improper payments to state officers and employees

A. Any officer or employee of the Commonwealth who obtains any compensation or payment to which the officer or employee is not entitled shall be liable for repayment to the employer. Such recipient officer or employee shall not be liable for repayment if the recipient officer or employee proves by a preponderance of the evidence that the improper payment occurred through no fault of the recipient officer or employee and such officer or employee had no actual knowledge of the error and could not have reasonably detected the error.

B. Any officer or employee of the Commonwealth who authorizes any other officer or employee to obtain any compensation or payment to which the recipient officer or employee is not entitled, where such authorization is made with actual or constructive knowledge that the recipient officer or employee was not entitled to such compensation or payment, shall be liable for repayment to the employer.

C. When a change or error in records results in any officer or employee receiving any compensation or payment to which he is not entitled, upon discovery of the improper payment the employer shall take appropriate action to correct the error as soon as practicable and adjust future payments to the correct compensation or payment amount.

D. If the officer or employee leaves state service, liability is disputed, or recovery cannot otherwise be accomplished, the employer shall request the Attorney General to bring an action for restitution pursuant to this section in accordance with the Virginia Debt Collection Act (§ 2.2-4800 et seq.). Claims under this section may be compromised pursuant to and consistent with § 2.2-514.

E. If the officer or employee (i) does not dispute liability under subsection A or B, (ii) receives overpayments stemming from erroneous good faith under-withholdings for retirement, health insurance, or other benefit program enrollments, (iii) receives overpayments of less than $500 from erroneous good faith wage, salary, or expense reimbursements, or (iv) is determined to be liable by a court of competent jurisdiction, the employer shall be authorized to use payroll deductions to recover the erroneous payments made to the officer or employee. Payroll deductions made pursuant to this section shall be limited to 25 percent of disposable earnings as defined in subsection (d) of § 34-29.

F. The provisions of this section shall apply to all officers and employees of the Commonwealth whether or not exempt from the provisions of Chapter 29 (§ 2.2-2900 et seq.).

G. The provisions of this section shall not apply to good faith disbursements made to beneficiaries of the Virginia Retirement System.

1998, c. 876, § 2.1-196.2; 2001, c. 844; 2012, c. 307.

§ 2.2-805. Fiscal year

The fiscal year shall commence on the first day of July and end on the thirtieth day of June.

Code 1950, § 2-165; 1966, c. 677, § 2.1-197; 2001, c. 844.

§ 2.2-806. Reports and payments by city and county treasurers, and clerks of court; deposits of state income tax payments

A. All county and city treasurers receiving state income tax payments, whether from taxpayers or from the commissioner of the revenue, shall deposit the payments, within one banking day of receipt, into an account of the state treasury. The treasurers shall maintain a record of the date on which the payments are received and the date on which the payments are deposited into the state treasury. The Auditor of Public Accounts shall either prescribe or approve the treasurer's record-keeping system and shall audit such records as provided for in Chapter 14 (§ 30-130 et seq.) of Title 30. Reporting of the deposits shall be in accordance with subsection B.

B. All county and city treasurers and clerks of courts receiving state moneys shall deposit promptly all state moneys and, in the manner directed by the State Treasurer, shall transfer state moneys into an account of the state treasury twice each week and submit a report of state moneys being transferred. However, except for state income tax payments that shall be controlled by subsection A, state moneys received amounting to less than $5,000 may be transferred into an account of the state treasury once each week.

Code 1950, § 2-166; 1966, c. 677, § 2.1-198; 1982, c. 292; 1987, c. 511; 1991, c. 485; 2001, c. 844.

§ 2.2-807. Monthly reports of state departments, divisions, etc., receiving public funds

Every state department, division, officer, board, commission, institution or other agency owned or controlled by the Commonwealth, whether at the seat of government or not, including county and city treasurers and clerks of courts, collecting or receiving public funds, or moneys from any source whatever, belonging to or for the use of the Commonwealth, or for the use of any state agency, and paying the same to the State Treasurer, or depositing the same to his credit in pursuance of law, shall, on or before the tenth day of each month, or oftener if so directed by the Comptroller, report to the Comptroller in such manner as he may direct, the amount collected or received and paid into the state treasury for the preceding calendar month or other period designated by the Comptroller. The report shall show also the dates of payments to or deposits to the credit of the State Treasurer.

Code 1950, § 2-167; 1966, c. 677, § 2.1-199; 2001, c. 844.

§ 2.2-808. Collection of delinquent taxes

Whenever, by any section of this Code, the Comptroller is required or is authorized to collect any delinquent taxes, he shall refer the matter to the Tax Commissioner, who shall at once proceed to collect the same and may employ such legal process as may be necessary for that purpose. When so collected the Tax Commissioner shall pay the same into the state treasury.

Code 1950, § 2-167.1; 1966, c. 677, § 2.1-200; 2001, c. 844.

§ 2.2-809. When accounts on Comptroller's books to be balanced; general ledger of accounts

All unsettled accounts on the books of the Comptroller shall be balanced on the last day of each fiscal year, and the balances brought forward on the first day of the new fiscal year. For this purpose there shall be a general ledger of accounts, which shall be kept to show the balances due to or from the Commonwealth.

Code 1950, § 2-169; 1966, c. 677, § 2.1-202; 2001, c. 844.

§ 2.2-810. Judges and clerks to certify to Supreme Court lists of all allowances made by courts

The judge of every court of the Commonwealth making an allowance for the payment of any sum out of the state treasury shall certify to the Supreme Court a list of all allowances at least monthly, the date of the making and the amount of such allowance, and to whom made. A certificate of all allowances made by such court shall be made up by the clerk of the court and forwarded to the Supreme Court. The form of the certificate shall be prescribed by the Supreme Court, and it shall be made on blanks prepared by them and furnished the judges and clerks of the several courts of the Commonwealth. The Comptroller shall not draw any warrant on the State Treasurer in satisfaction of any allowance made by any court of the Commonwealth until the Supreme Court has received notification of the allowance by the court of the claim and approved the allowance for payment.

Code 1950, § 2-172; 1966, c. 677, § 2.1-204; 1978, c. 195; 1979, c. 509; 2001, c. 844.

§ 2.2-811. Cancellation of state bonds received in settlement of claims

All bonds of the Commonwealth that are received by the Comptroller in the settlement of claims of the Commonwealth against the sureties of treasurers, sheriffs, or other officers, or in settlement of any other claim, shall be turned over by him to the Treasury Board, who shall cancel the bonds according to law.

Code 1950, § 2-173; 1966, c. 677, § 2.1-205; 2001, c. 844.

§ 2.2-812. What Comptroller may do with old books and papers

The Comptroller may dispense with all noncurrent books, papers, invoices, financial documents, and similar papers belonging to his office in a manner prescribed by the Virginia Public Records Act (§ 42.1-76 et seq.) in coordination with the needs of the Auditor of Public Accounts.

Code 1950, § 2-174; 1960, c. 240; 1966, c. 677, § 2.1-206; 1981, c. 514; 2001, c. 844.

§ 2.2-813. Annual report of Comptroller to Governor

The Comptroller shall make a preliminary annual report to the Governor on or before August 15. The Governor shall submit the preliminary report to the General Assembly within thirty days of its receipt. The Comptroller shall provide a final annual report on or before December 15. The report shall include (i) financial statements that are prepared, insofar as practical as determined by the Comptroller and the Auditor of Public Accounts, in accordance with generally accepted accounting principles; (ii) supplementary statements prepared on the budgetary basis of accounting; (iii) information provided by the State Treasurer on the status of bonded debt in the Commonwealth and the future general fund requirements for such debt; and (iv) other information deemed necessary by the State Treasurer. The Comptroller and the State Treasurer shall also make other reports at such times as the Governor may require.

Code 1950, § 2-175; 1960, c. 84; 1966, c. 677, § 2.1-207; 1984, c. 378; 1992, c. 327; 2001, c. 844.

§ 2.2-813.1. Biannual disclosure by Comptroller of revenue sources collected

The Comptroller shall post on the Internet website for the Department of Accounts the following information according to the following schedule: (i) no later than October 1 of each year, the total amount of each revenue source collected by the Commonwealth for the most recent six-month period ending June 30, and (ii) no later than April 1 of each year, the total amount of each revenue source collected by the Commonwealth for the most recent six-month period ending December 30. The Comptroller shall include in the information posted any Auditor of Public Accounts control findings that any revenue source was used for any purpose other than the purpose originally established in law for such revenue source.

This section may be referred to as the Virginia Truth in Revenue Source Reporting Act.

2003, c. 174.

§ 2.2-813.2. Biannual disclosure by Comptroller of other obligations of the Commonwealth

To assist in the managing, planning, and budgeting of the state's financial resources, the Comptroller, in conjunction with the Secretary of Finance, shall report biannually to the Governor and the members of the General Assembly each off-balance sheet financial obligation of the Commonwealth, itemized by agency, board, institution, or authority of the Commonwealth, and such other obligations of the Commonwealth that are estimated by the Comptroller to be incurred.

2007, c. 62.

Article 2 - CLAIMS AGAINST COMMONWEALTH

§ 2.2-814. To whom claims presented; Comptroller to furnish forms

A. Any person having any pecuniary claim against the Commonwealth upon any legal ground shall present the same to the head of the department, division, institution or agency of the Commonwealth responsible for the alleged act or omission which, if proved, gives rise to the claim. If, however, the claimant cannot identify the alleged act or omission with any single department,

division, institution or agency of the Commonwealth, then the claim shall be presented to the Comptroller.

B. The Comptroller shall supply the several clerks of record and, upon request, each head of a department, division, institution or agency mentioned in subsection A with the necessary forms to be used by them for accounts payable out of the state treasury.

Code 1950, §§ 2-193, 2-194; 1960, c. 240; 1966, c. 677, §§ 2.1-223.1, 2.1-223.2; 2001, c. 844.

§ 2.2-815. Claims to be examined and forwarded to Comptroller; what Comptroller may allow

A. Every claim authorized to be presented to the Comptroller or to the head of a department, division, institution or agency shall be examined by the person to whom it is presented and forwarded with appropriate supporting papers and recommendations without unreasonable delay to the Comptroller, who shall promptly allow the amount that appears to be due.

B. No allowance made by order of any court of record shall be paid out of the state treasury, unless presented to the Comptroller for payment within two years from the date of the allowance.

Code 1950, §§ 2-196, 2-197; 1966, c. 677, §§ 2.1-223.3, 2.1-223.4; 2001, c. 844.

§ 2.2-816. When Comptroller may refer claim to Governor

Whenever a claim cannot be allowed solely because it was not presented within the time prescribed by § 8.01-255, the Comptroller may, within three years after the claim might have been presented, refer the same to the Governor, who may direct payment of all or any part of the claim.

Code 1950, § 2-199; 1966, c. 677, § 2.1-223.6; 1977, c. 624; 2001, c. 844.

Chapter 9 - DEPARTMENT OF BUSINESS ASSISTANCE [Repealed]

§§ 2.2-900 through 2.2-904.1. Repealed

Repealed by Acts 2013, c. 482, cl. 2, effective January 1, 2014.

§ 2.2-904.2. Repealed

Repealed by Acts 2012, cc. 774, 775, cl. 2.

Chapter 9.1 - DEPARTMENT OF CHARITABLE GAMING

§§ 2.2-905, 2.2-906. Repealed

Repealed by Acts 2008, cc. 387 and 689, cl. 2.

Chapter 10 - DEPARTMENT OF EMPLOYMENT DISPUTE RESOLUTION

§§ 2.2-1000, 2.2-1001. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 9.

Chapter 11 - DEPARTMENT OF GENERAL SERVICES

Article 1 - GENERAL PROVISIONS

§ 2.2-1100. Creation of Department; appointment of Director; duties

A. There is created a Department of General Services (the Department), which shall be headed by a Director appointed by the Governor to serve at his pleasure.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor. The Director shall be responsible for the overall supervision of the Department's divisions, programs and personnel. Under his direction the Department shall serve as an agency whose services are primarily for the support of other state agencies in carrying out their programs. The head of each division shall, under the direction and control of the Director, exercise the powers and perform the duties conferred by this chapter as they pertain to his division and perform such other duties as required by the Director.

C. Whenever in this title and in the Code of Virginia, reference is made to a division, department or agency transferred to this Department, it shall mean the Department of General Services, through the division to which the powers and duties of that division, department or agency are assigned. Notwithstanding anything in this section to the contrary, the Director shall have the authority to create new divisions within the Department and to assign or reassign the duties of the Department's divisions to whatever divisions as may best perform them.

1977, c. 672, §§ 2.1-422, 2.1-423, 2.1-425; 1978, c. 255; 1984, c. 720; 2001, c. 844; 2005, c. 385.

§ 2.2-1101. Creation of internal service fund accounts

Upon written request of the Director of the Department, the Joint Legislative Audit and Review Commission may direct the Comptroller to establish internal service fund accounts on his books and record the receipts and expenditures for appropriate functions of the Department. The Comptroller shall provide the Department with working capital advances with which to finance these operations pursuant to appropriations made by law. Charges for services rendered sufficient to offset costs involved in these operations shall be established.

1977, c. 672, § 2.1-425; 1978, c. 255; 2001, c. 844.

§ 2.2-1102. Additional powers of Department

A. The Department shall have the following additional powers, all of which, with the approval of the Director of the Department, may be exercised by a division of the Department with respect to matters assigned to that division:

1. Prescribe regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter; and

2. Establish fee schedules that may be collectible from users when general fund appropriations are not applicable to the services rendered.

B. All statewide contracts and agreements made and entered into by the Department for the purchase of computers, software, supplies, and related peripheral equipment and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. For good cause shown, the Secretary of Administration may disapprove the inclusion from a specific contract or agreement.

C. The Department may operate or provide for the operation of hazardous waste management facilities.

1977, c. 672, § 2.1-424; 1986, c. 492, § 2.1-425.2; 1995, c. 357; 2001, c. 844.

Article 2 - DIVISION OF CONSOLIDATED LABORATORY SERVICES

§ 2.2-1103. Division of Consolidated Laboratory Services

Within the Department shall be created the Division of Consolidated Laboratory Services (the "Division"), which shall provide certain laboratory services, including research and scientific investigations, for various agencies of the Commonwealth in an efficient, effective and professional manner. The provisions of this article shall in no manner limit the authority and responsibilities of institutions of higher education from conducting laboratory services, research and scientific investigations independently of the Division.

Code 1950, § 32-31.1; 1972, c. 741; 1977, c. 672, § 2.1-426; 1990, c. 825; 2001, c. 844.

§ 2.2-1104. Laboratory, testing, and analytical functions

A. The Division shall provide, but is not limited to, the following specific laboratory, testing and analytical functions:

1. Maintain laboratories for the examination of clinical material and pathological specimens submitted by members of the medical profession of the Commonwealth and for which the Division may charge fees to recover full costs.

2. Provide laboratory services for the testing and analysis of various products, foods, drinks, economic poisons and other materials regulated or controlled by the Commonwealth.

3. Provide laboratory services for the analysis and examination of samples and materials related to environmental control.

4. Establish and conduct programs of inspection and certification of other laboratories in the Commonwealth as mandated by the federal Safe Drinking Water Act (P.L. 93-523) and state requirements pursuant to that Act.

B. No fee shall be charged for the analyses of water samples that are required by regulations of the Department of Health or for feed and fertilizer samples that are required by regulations of the Department of Agriculture and Consumer Services.

C. The Division may provide, upon request of any law-enforcement agency, chemical and microbiological testing and analytical functions related to any criminal investigation. Nothing in this section shall be construed to limit or preclude the Department of Forensic Science from conducting all necessary testing and analytical functions associated with any criminal investigation.

D. Upon request of a bidder on any state contract that requires the Division to test or analyze the product being offered by the bidder, the Director of the Division of Purchases and Supply may allow such bidder or his representative to witness the test or analysis.

E. The Division shall provide for security and protection of evidence, official samples and all other samples submitted to the Division for analysis or examination.

1977, c. 672, §§ 2.1-429, 2.1-430; 1984, c. 275; 1986, c. 610; 1989, cc. 53, 409; 1990, c. 825; 1992, cc. 747, 873; 1996, c. 355; 2001, c. 844; 2005, cc. 868, 881.

§ 2.2-1105. Environmental laboratory certification program

A. The Division shall by regulation establish a program for the certification of laboratories conducting any tests, analyses, measurements, or monitoring required pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, the Virginia Waste Management Act (§ 10.1-1400 et seq.), or the State Water Control Law (§ 62.1-44.2 et seq.). The program shall include, but need not be limited to, minimum criteria for (i) laboratory procedures, (ii) performance evaluations, (iii) supervisory and personnel requirements, (iv) facilities and equipment, (v) analytical quality control and quality assurance, (vi) certificate issuance and maintenance, (vii) recertification and decertification, and (viii) granting partial and full exemptions from the program based on compliance and performance. The regulations shall be promulgated only after adoption of national accreditation standards by the National Environmental Laboratory Accreditation Conference sponsored by the United States Environmental Protection Agency. The purpose of the program shall be to ensure that laboratories provide accurate and consistent tests, analyses, measurements and monitoring so that the goals and requirements of Chapter 13 of Title 10.1, the Virginia Waste Management Act, and the State Water Control Law may be met.

B. Once the certification program has been established, laboratory certification shall be required before any tests, analyses, measurements or monitoring performed by a laboratory after the effective date of such program may be used for the purposes of Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, the Virginia Waste Management Act, and the State Water Control Law.

C. The Division shall by regulation establish a fee system to offset the costs of the certification program. The regulations shall establish fee categories based upon the types of substances for which tests, analyses, measurements or monitoring are performed. The fees shall be used solely for offsetting the costs of the laboratory certification program.

D. The Division shall develop procedures for determining the qualifications of laboratories located in jurisdictions outside of Virginia to conduct tests, analyses, measurements or monitoring for use in Virginia. Laboratories located outside of Virginia that are certified or accredited under a

program determined by the Division to be equivalent to the program established under this section shall be deemed to meet the certification requirements.

E. In addition to any other penalty provided by law, laboratories found to be falsifying any data or providing false information to support certification shall be decertified or denied certification.

F. Any laboratory subject to this section may petition the Director of the Division for a reasonable variance from the requirements of the regulations promulgated under this section. The Division may grant a reasonable variance if the petitioner demonstrates to the Director's satisfaction that (i) the proposed variance will meet the goals and purposes of the provisions of this section or regulation promulgated under this section, and (ii) the variance does not conflict with federal or state law or regulations. Any petition submitted to the Director is subject to the Administrative Process Act (§ 2.2-4000 et seq.).

G. The provisions of this section shall not apply to laboratories when performing tests, analyses, measurements, or monitoring, using protocols pursuant to § 10.1-104.2 to determine soil fertility, animal manure nutrient content, or plant tissue nutrient uptake for the purposes of nutrient management.

1997, c. 652, § 2.1-429.01; 2001, c. 844; 2003, c. 580; 2012, cc. 99, 753.

§ 2.2-1106. Consolidation of other laboratories

The Director of the Department may take in and absorb within the Division any laboratory activity that is owned and operated by a political subdivision of the Commonwealth that will conform to the duties and responsibilities of the Division. Any costs that may accrue to the Commonwealth as a result of the consolidation shall be paid out of funds specifically appropriated for this purpose by the appropriation act.

1987, c. 369, § 2.1-429.4; 1996, cc. 366, 447; 2001, c. 844.

§ 2.2-1107. Disposal of certain hazardous materials

Any material seized in a criminal investigation and deemed to be hazardous to health and safety, may be disposed of upon written application of the Division to the attorney for the Commonwealth in the city or county where the material is seized or where any criminal prosecution in which such material is proposed to be evidence is pending. Upon receipt, the attorney for the Commonwealth shall file the application in the circuit court of such county or city. A sworn analysis report signed by a person designated by the Director of the Division shall accompany the application for disposal and shall clearly identify and designate the material for disposal. The application shall state the nature and quantity of the hazardous materials, the location where seized, the person from whom the materials were seized, and the manner in which the material shall be destroyed. Where the ownership of the hazardous material is known, notice shall be given to the owner at least three days prior to any hearing relating to the destruction, and, if any criminal charge is pending in any court as a result of the seizure, notice shall be given to the accused if other than the owner. Upon receipt of the analysis report and the application, the court may order

the destruction of all, or a part of, the material; however, a sufficient and representative quantity of the material shall be retained to permit an independent analysis when a criminal prosecution may result from the seizure. A return under oath, reporting the time, place and manner of destruction shall be made to the courts. Copies of the analysis report, application, order and return shall be made a part of the record of any criminal prosecution. The sworn analysis report shall be admissible as evidence to the same extent as the disposed-of material would have been admissible.

Code 1950, § 32-31.6:1; 1976, c. 576; 1977, c. 672, § 2.1-432; 1990, c. 825; 2001, c. 844.

§ 2.2-1108. Disposal of certain other property

Personal property, including drugs, not subject to be disposed of under § 2.2-1107, which has been submitted to the Division for analysis or examination and that has not been reclaimed by the agency submitting the property for analysis or examination, may be disposed of by the Division in accordance with this section if, after the expiration of 120 days after the receipt by the Division of the property, (i) the Director notifies the circuit court of the county or city from which the property was taken, in writing, that the analysis or examination has been completed and (ii) a report is given to the submitting agency that the property has not been reclaimed by the agency and the Division proposes to dispose of the property. The notice shall state the nature and quantity of the property, the location where seized, the name of the accused, if known, and the proposed method of disposing of the property. When the ownership of the property is known, a copy of the notice shall be sent simultaneously with the notice to the court to the owner, or, if any criminal charge is pending in any court relating to the property, the copy shall be sent to the accused at his last known address. Notice shall be by certified mail. The court, within thirty days after receipt of the notice, may direct that the property be disposed of by the Division by an alternative method designed to preserve the property, at the expense of the agency submitting the property to the Division. If the court does not so direct within such thirty-day period, then the Division may dispose of the property by the method set out in the notice. Copies of the analysis report and notice shall be made a part of the record of any criminal prosecution. The report, if sworn to, shall be admissible as evidence to the same extent as the disposed of property would have been admissible.

1978, c. 317, § 2.1-432.1; 1990, c. 825; 2001, c. 844.

Article 3 - DIVISION OF PURCHASES AND SUPPLY

§ 2.2-1109. Division of Purchases and Supply established

Within the Department shall be created a Division of Purchases and Supply (the "Division"), which shall exercise the powers and duties described in this article.

1977, c. 672, § 2.1-435; 2001, c. 844.

§ 2.2-1110. Using agencies to purchase through Division of Purchases and Supply; exception

A. (Effective until October 1, 2016) Except as provided by § 2.2-2012 or otherwise directed and authorized by the Division or in the Code of Virginia, every authority, department, division, institution, officer, agency, and other unit of state government, hereinafter called the using agency, shall purchase through the Division all materials, equipment, supplies, printing and nonprofessional services of every description, whenever the whole or a part of the costs is to be paid out of the state treasury. The Division shall make such purchases in conformity with this article.

The Division shall maintain the Department of General Services' central electronic procurement system. At a minimum this procurement system shall provide for the purchase of goods and services, public posting of all Invitations to Bid, Requests for Proposal, sole source award notices, emergency award notices, and reports on purchases. All using agencies shall utilize the Department of General Services' central electronic procurement system as their purchasing system beginning at the point of requisitioning for all procurement actions, including but not limited to technology, transportation, and construction, unless otherwise authorized in writing by the Division. Where necessary to capture data in agency enterprise resource planning systems and to eliminate or avoid duplicate or manual data entry in such agency systems, using agencies shall integrate their enterprise resource planning systems with the Department of General Services' central electronic procurement system, unless otherwise authorized in writing by the Division or in accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.).

Using agencies shall post on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Commonwealth's procurement opportunities on one website.

To increase transparency of governmental procurement activities, the Division shall direct all using agencies to conspicuously post on their respective homepages links to the Department of General Services' central electronic procurement system reports, thereby making them accessible to the public.

A. (Effective October 1, 2016) Except as provided by § 2.2-2012 or otherwise directed and authorized by the Division or in the Code of Virginia, every authority, department, division, institution, officer, agency, and other unit of state government, hereinafter called the using agency, shall purchase through the Division all materials, equipment, supplies, printing and nonprofessional services of every description, whenever the whole or a part of the costs is to be paid out of the state treasury. The Division shall make such purchases in conformity with this article.

The Division shall maintain the Department of General Services' central electronic procurement system. At a minimum this procurement system shall provide for the purchase of goods and services, public posting of all Invitations to Bid, Requests for Proposal, sole source award notices, emergency award notices, and reports on purchases. All using agencies shall utilize the

Department of General Services' central electronic procurement system as their purchasing system beginning at the point of requisitioning for all procurement actions, including but not limited to technology, transportation, and construction, unless otherwise authorized in writing by the Division. Where necessary to capture data in agency enterprise resource planning systems and to eliminate or avoid duplicate or manual data entry in such agency systems, using agencies shall integrate their enterprise resource planning systems with the Department of General Services' central electronic procurement system, unless otherwise authorized in writing by the Division or in accordance with the provisions of the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.).

Using agencies shall post on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Commonwealth's procurement opportunities on one website.

To increase transparency of governmental procurement activities, the Division shall direct all using agencies to conspicuously post on their respective homepages links to the Department of General Services' central electronic procurement system reports, thereby making them accessible to the public.

B. The provisions of subsection A shall not apply to the purchase of materials, equipment, supplies, printing and nonprofessional services of every description by the Virginia Retirement System; however, the Board of Trustees of the Virginia Retirement System shall adopt regulations made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) that specify policies and procedures that are based on competitive principles and that are generally applicable to procurement of such goods and services by comparably situated state agencies. The exemption provided by this subsection shall apply for only as long as such regulations, or other regulations meeting the requirements of this subsection, remain in effect at the Virginia Retirement System.

Code 1950, § 2-249; 1958, c. 124; 1966, c. 677, § 2.1-273; 1977, c. 672, § 2.1-440; 1980, c. 357; 1988, c. 140; 1995, c. 788; 2001, c. 844; 2003, cc. 981, 1021; 2011, c. 332; 2013, c. 493.

§ 2.2-1111. Purchases to be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and regulations of Division; exempt purchases

A. All purchases made by any department, division, officer or agency of the Commonwealth shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and such regulations as the Division may prescribe.

B. The regulations adopted by the Division shall:

1. Include a purchasing plan that shall be on file at the Division and shall be available to the public upon request;

2. Require that before any public body procures any computer system, equipment or software, it shall consider whether the proposed system, equipment or software is capable of producing products that facilitate the rights of the public to access official records under the Freedom of Information Act (§ 2.2-3700 et seq.) or other applicable law;

3. Require state public bodies to procure only shielded outdoor light fixtures and provide for waivers of this requirement when the Division determines that a bona fide operational, temporary, safety or specific aesthetic need is indicated or that such fixtures are not cost effective over the life cycle of the fixtures. For the purposes of this subdivision, "shielded outdoor light fixture" means an outdoor light fixture that is (i) fully shielded so that no light rays are emitted by the installed fixture above the horizontal plane or (ii) constructed so that no more than two percent of the total luminaire lumens in the zone of 90 to 180 degrees vertical angle is permitted, if the related output of the luminaire is greater than 3200 lumens. In adopting regulations under this subdivision, the Division shall consider national standards for outdoor lighting as adopted by the Illuminating Engineering Society of North America (IESNA).

The Virginia Department of Transportation shall design all lighting systems in accordance with current IESNA standards and recommended practices. The lighting system shall utilize fixtures that minimize glare, light trespass, and skyglow, all as defined by the IESNA, while still providing a comfortable, visually effective, safe, and secure outdoor environment in a cost-effective manner over the life cycle of the lighting system;

4. Establish the conditions under which a public body may use, as a basis for the procurement of goods and nonprofessional services, a particular vendor's contract-pricing that has been negotiated and accepted by the U.S. General Services Administration;

5. Establish procurement preferences for products containing recycled oil (including reprocessed and rerefined oil products) and recycled antifreeze;

6. Establish conditions under which a public body shall demonstrate a good faith effort to ensure that state contracts or subcontracts for goods or services that involve the manual packaging of bulk supplies or the manual assemblage of goods where individual items weigh less than 50 pounds be offered to employment services organizations as defined in § 2.2-4301 that offer transitional or supported employment services serving individuals with disabilities;

7. Establish the conditions under which state public bodies may procure diesel fuel containing, at a minimum, two percent, by volume, biodiesel fuel or green diesel fuel, as defined in § 59.1-284.25 as such section was in effect on June 30, 2015, for use in on-road internal combustion engines. The conditions shall take into consideration the availability of such fuel and the variability in cost of biodiesel fuel with respect to unblended diesel fuel; and

8. Shall include a link to the Virginia Department of Agriculture and Consumer Services Virginia Grown website on the Department of General Services' central electronic procurement system to facilitate purchases of Virginia-grown food products.

C. The Division may make, alter, amend or repeal regulations relating to the purchase of materials, supplies, equipment, nonprofessional services, and printing, and may specifically exempt purchases below a stated amount or particular agencies or specified materials, equipment, nonprofessional services, supplies and printing.

Code 1950, § 2-251; 1958, c. 124; 1966, c. 677, § 2.1-275; 1977, c. 672, § 2.1-442; 1979, c. 508; 1980, c. 357; 1982, c. 647; 1996, c. 435; 1997, c. 907; 2001, cc. 569, 844; 2002, c. 504; 2003, c. 294; 2005, c. 817; 2007, c. 630; 2010, c. 458; 2011, cc. 815, 864; 2012, cc. 632, 803, 835; 2015, c. 761; 2016, c. 465.

§ 2.2-1112. Standardization of materials, equipment and supplies

A. So far as practicable, all materials, equipment and supplies, purchased by or for the officers, departments, agencies or institutions of the Commonwealth, shall be standardized by the Division, and no variation shall be allowed from any established standard without the written approval of the Division. The standard shall be determined upon the needs of all using agencies, so far as their needs are in common, and for groups of using agencies or single using agencies so far as their needs differ. When changes or alterations in equipment are necessary in order to permit the application of any standard, the changes and alterations shall be made as rapidly as possible.

B. The Division shall determine the proper equipment or electrical devices used to monitor the speed of any motor vehicle pursuant to § 46.2-882 and shall so advise the respective law-enforcement officials. Police chiefs and sheriffs shall ensure that all such equipment and devices meet or exceed the standards established by the Division. This subsection shall apply only to equipment and devices purchased on or after July 1, 1986.

C. The Division shall determine the proper equipment to be used to determine the decibel level of sound and shall so advise the respective law-enforcement officials. Police chiefs and sheriffs shall ensure that all such equipment and devices meet or exceed the standards established by the Division and shall maintain, inspect, calibrate, and test for accuracy all such equipment and devices on a schedule and in accordance with standards established by the Division.

Code 1950, §§ 2-255, 2-256; 1958 c. 124; 1966, c. 677, §§ 2.1-279, 2.1-280; 1972, c. 494; 1977, c. 672, § 2.1-446; 1986, c. 530; 1991, c. 345; 2001, c. 844; 2010, c. 558.

§ 2.2-1113. Printing management coordination; uniform standards for state forms

A. The Division may establish criteria and procedures to obtain more economical operation of state printing facilities, provide guidelines to agencies regarding the most beneficial utilization of duplicating and reproduction equipment, and to centralize printing, duplicating and reproduction equipment and services.

B. The Division may set uniform standards for the design, utilization, procurement and inventory of state forms.

1972, c. 503, § 2.1-243.1; 1976, c. 759; 1977, c. 672, §§ 2.1-464, 2.1-465; 2001, c. 844.

§ 2.2-1114. Regulations as to estimates and requisitions; submission of estimates

The Division shall prescribe and enforce regulations under which estimates of the needs of the using agencies shall be submitted and requisitions made, and under which contracts for purchases may be made. Estimates of the amount and quality of materials, equipment, supplies, and printing needed by the using agencies shall be submitted at such periods as may be prescribed by the Division.

Code 1950, § 2-250; 1958, c. 124; 1966, c. 677, § 2.1-274; 1977, c. 672, § 2.1-441; 1980, c. 357; 2001, c. 844.

§ 2.2-1115. Execution of contracts; payment for purchases; violations

A. All contracts entered into by the Division shall be executed in the name of the Commonwealth.

B. All purchases made by or through the Division shall be paid for in the same manner and out of the same funds as if the purchase had not been made by or through it.

C. The Division shall maintain a system of accounting prescribed by the State Comptroller. All moneys collected by the Division shall be paid promptly into the state treasury and reported to the State Comptroller for appropriate credit.

D. The Comptroller shall not issue any warrant upon any voucher issued by any using agency covering the purchase of any material, equipment or supplies, when such purchases are made in violation of any provision of this article.

E. Intentional violations of the centralized purchasing provisions of this article by any using agency, continued after notice from the Governor to desist, shall constitute malfeasance in office, and shall subject the officer responsible for violation to suspension or removal from office, as may be provided by law in other cases of malfeasance.

Code 1950, §§ 2-215, 2-216, 2-253, 2-263, 2-264; 1958, c. 124; 1966, c. 677, §§ 2.1-240, 2.1-241, 2.1-277, 2.1-289, 2.1-290; 1977, c. 672, §§ 2.1-438, 2.1-444, 2.1-455, 2.1-456; 1984, c. 612; 2001, c. 844.

§ 2.2-1115.1. Standard vendor accounting information

A. The Division, the Virginia Information Technologies Agency, and the State Comptroller shall develop and maintain data standards for use by all agencies and institutions for payments and purchases of goods and services pursuant to §§ 2.2-1115 and 2.2-2012. Such standards shall include at a minimum the vendor number, name, address, and tax identification number; commodity code, order number, invoice number, and receipt information; and other information necessary to appropriately and consistently identify all suppliers of goods, commodities, and other services to the Commonwealth. The Division, the Virginia Information Technologies Agency, and the State Comptroller shall annually review and update these standards to provide the Commonwealth information to monitor all procurement of goods and services and to implement adequate controls to pay only authorized providers of goods and services to the Commonwealth.

B. The Division and the Virginia Information Technologies Agency shall submit these standards to the Information Technology Advisory Council in accordance with § 2.2-2699.6 for review as statewide technical and data standards for information technology.

C. The Division and the State Comptroller shall adhere to the adopted data standards and match all purchases of goods, commodities, and other services to the related payment activity and make the matched information available on the Auditor of Public Accounts' Commonwealth Data Point website pursuant to subdivision H 3 a of § 30-133. This information shall be available at a transactional level and be in sufficient detail to make clear what an agency has purchased; when the purchase was made; the vendor from whom the purchase was made; the amount purchased, if applicable; and how much was paid. To the extent the purchase is made for professional services as defined in § 2.2-4301, other than for accounting or legal services, from an entity of the Commonwealth, the name of the buyer in the selling Department or agency shall be specified. Purchases made using credit card or other financing arrangements shall specify the vendor.

2009, cc. 758, 812; 2010, cc. 136, 145; 2013, c. 493.

§ 2.2-1116. Purchase of products and services of state correctional facilities

The provisions of this article shall be subject to the provisions of Title 53.1 relating to the products and services of state correctional facilities required by state departments, institutions, and agencies, and the purchase of the same through the Division.

Code 1950, § 2-268; 1958, c. 124; 1966, c. 677, § 2.1-294; 1977, c. 672, § 2.1-453; 2001, c. 844.

§ 2.2-1117. Purchases from Department for the Blind and Vision Impaired; violation

Unless exempted by the Division, all such services, articles and commodities as (i) are required for purchase by the Division or by any person authorized to make purchases on behalf of the Commonwealth and its departments, agencies and institutions; (ii) are performed or produced by persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; (iii) are available for sale by such Department; and (iv) conform to the standards established by the Division shall be purchased from such Department at the fair market price without competitive procurement. When convenience or emergency requires it the Commissioner of the Department for the Blind and Vision Impaired may, upon request of the purchasing officer, release the purchasing officer from the obligations of this section. Any purchasing officer convicted of a violation of this section shall be guilty of a Class 1 misdemeanor.

Code 1950, § 2-259.2; 1954, c. 71; 1958, c. 124; 1966, c. 677, § 2.1-285; 1977, c. 672, § 2.1-450; 1982, c. 647; 1984, c. 498; 2001, c. 844.

§ 2.2-1118. Purchases from employment services organizations of Virginia serving individuals with disabilities

A. The Division shall publish annually a list of materials, supplies, services and equipment which, in the opinion of the Division, would be beneficial to the Commonwealth to procure from an employment services organization as defined in § 2.2-4301. The list shall exclude items currently

produced by schools or workshops under the supervision of the Virginia Department for the Blind and Vision Impaired or by inmates confined in state correctional institutions.

B. Any item or service included on the list required by subsection A may be purchased by the Division from employment services organizations serving individuals with disabilities without competitive procurement, if the Division is satisfied that the items and services (i) can be purchased within ten percent of their fair market value, (ii) will be of acceptable quality, and (iii) can be produced in sufficient quantities within the time required.

C. Nothing in this section shall prohibit the Division from amending the list required under subsection A by adding categories to the list after it has been published.

1978, c. 24, § 2.1-450.1; 1982, c. 647; 1987, c. 72; 2001, c. 844; 2012, c. 632.

§ 2.2-1119. Cases in which purchasing through Division not mandatory

A. Unless otherwise ordered by the Governor, the purchasing of materials, equipment, supplies, and nonprofessional services through the Division shall not be mandatory in the following cases:

1. Materials, equipment and supplies incident to the performance of a contract for labor or for labor and materials;

2. Manuscripts, maps, audiovisual materials, books, pamphlets and periodicals purchased for the use of The Library of Virginia or any other library in the Commonwealth supported in whole or in part by state funds;

3. Perishable articles, provided that no article except fresh vegetables, fish, eggs or milk shall be considered perishable within the meaning of this subdivision, unless so classified by the Division;

4. Materials, equipment and supplies needed by the Commonwealth Transportation Board; however, this exception may include, office stationery and supplies, office equipment, janitorial equipment and supplies, and coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;

5. (Effective until July 1, 2018) Materials, equipment and supplies needed by the Virginia Alcoholic Beverage Control Board; however, this exception may include, office stationery and supplies, office equipment, janitorial equipment and supplies, and coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;

5. (Effective July 1, 2018) Materials, equipment, and supplies needed by the Virginia Alcoholic Beverage Control Authority, including office stationery and supplies, office equipment, and janitorial equipment and supplies; however, coal and fuel oil for heating purposes shall not be included except when authorized in writing by the Division;

6. Binding and rebinding of the books and other literary materials of libraries operated by the Commonwealth or under its authority;

7. Printing of the records of the Supreme Court; and

8. Financial services, including without limitation, underwriters, financial advisors, investment advisors and banking services.

B. Telecommunications and information technology goods and services of every description shall be procured as provided by § 2.2-2012.

Code 1950, § 2-260; 1958, c. 124; 1966, c. 677, § 2.1-286; 1970, c. 225; 1977, c. 672, § 2.1-451; 1982, c. 647; 1988, c. 140; 1994, c. 64; 2001, c. 844; 2003, cc. 895, 981, 1021; 2015, cc. 38, 730.

§ 2.2-1120. Direct purchases by using agencies and certain charitable corporations and private nonprofit institutions of higher education

A. The Division shall have the power, by general rule or special order, to permit purchases of any material, equipment, supplies, printing or nonprofessional services of every description to be made by any using agency directly, and not through the Division, whenever it appears to the satisfaction of the Division that by reason of the excess transportation costs, a lower price with equal quality can be obtained by the using agency, or for any other reason, which in the judgment of the Division warrants an exemption.

B. The Division shall allow corporations operating in Virginia and granted tax exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge, to purchase directly from contracts established for state agencies and public bodies by the Division or, provided it is not prohibited by the terms of the procurement, through participation by the Division in other cooperative procurements.

C. The Division shall allow organizations that provide transportation services in Virginia and receive funding from the Federal Transit Administration or the Commonwealth Transportation Fund to purchase directly from contracts established for state agencies and public bodies by the Division. The Department of Rail and Public Transportation shall assist the Division in establishing and maintaining a list of organizations that shall be authorized to make purchases pursuant to this subsection.

D. The Division shall allow private institutions of higher education that are (i)(a) chartered in Virginia or (b) chartered by an Act of Congress in 1821 and that have owned and operated since 1991 a campus with a significant presence in the Commonwealth and (ii) granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code to purchase directly from contracts established for state agencies and public bodies by the Division.

Code 1950, § 2-257; 1958, c. 124; 1966, c. 677, § 2.1-281; 1977, c. 672, § 2.1-447; 1980, c, 357; 1988, c. 140; 2001, c. 844; 2002, c. 491; 2003, c. 225; 2004, c. 484; 2006, c. 582; 2015, c. 462.

§ 2.2-1121. Repealed

Repealed by Acts 2002, c. 579.

§ 2.2-1122. Aid and cooperation of Division may be sought by any public body or public broadcasting station in making purchases; use of facilities of Virginia Distribution Center; services to certain volunteer organizations

A. Virginia public broadcasting stations as defined in § 22.1-20.1, and public bodies as defined in § 2.2-4300 who are empowered to purchase material, equipment, and supplies of any kind, may purchase through the Division. When any such public body, public broadcasting station, or duly authorized officer requests the Division to obtain bids for any materials, equipment and supplies, and the bids have been obtained by the Division, the Division may award the contract to the lowest responsible bidder, and the public body or public broadcasting station shall be bound by the contract. The Division shall set forth in the purchase order that the materials, equipment, and supplies be delivered to, and that the bill be rendered and forwarded to, the public body or public broadcasting station. Any such bill shall be a valid and enforceable claim against the public body or public broadcasting station requesting the bids.

B. The Division may make available to any public body or public broadcasting station the facilities of the Virginia Distribution Center maintained by the Division; however, the furnishing of any such services or supplies shall not limit or impair any services or supplies normally rendered any department, division, institution, or agency of the Commonwealth.

C. The Board of Education shall furnish to the Division a list of public broadcasting stations in Virginia for the purposes of this section.

D. The services or supplies authorized by this section shall extend to any volunteer fire company or volunteer emergency medical services agency that is recognized by an ordinance to be a part of the safety program of a county, city, or town when the services or supplies are sought through and approved by the governing body of such county, city, or town.

E. For purposes of this section, "public broadcasting station" means the same as that term is defined in § 22.1-20.1.

1982, c. 647, § 2.1-454.1; 1984, c. 746; 1997, c. 858; 2001, c. 844; 2012, cc. 803, 835; 2015, cc. 502, 503.

§ 2.2-1123. Acquisition of surplus materials from the United States government

The Division is designated as the agency of state government responsible for acquiring surplus personal property, including but not limited to materials, supplies, and equipment, by purchase, gift, or otherwise, from the United States government or any of its agencies for distribution to departments, agencies, institutions and political subdivisions of the Commonwealth and to eligible, nonprofit, nongovernmental organizations for use in the organizations' activities within the Commonwealth. The acquisitions shall be made, when in the judgment of the Division, it is advantageous to the Commonwealth to do so. The property may be acquired for storage and subsequent distribution or for immediate distribution. The Division may collect the purchase price of any such property, if applicable, and service charges sufficient to defray the costs of carrying out

this program from entities to which it distributes the property. The Division shall publish a plan that meets the requirements of the Federal Property and Administrative Services Act of 1949, as it may be amended from time to time, and any similar federal statutes requiring such plan.

The Division may, by general rule or special order, delegate to any using department, agency, institution, political subdivision, or eligible, nonprofit, nongovernmental organization the authority to acquire such property directly from the federal government rather than through the Division, whenever the Division determines that it is advantageous to do so. The Division may prescribe regulations for the acquisition of such property by entities to which it delegates its authority.

1984, c. 746, § 2.1-445.1; 2001, c. 844.

§ 2.2-1124. Disposition of surplus materials

A. "Surplus materials" means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but shall not include property as defined in § 2.2-1147 that is determined to be surplus. Surplus materials shall not include finished products that a state hospital or training center operated by the Department of Behavioral Health and Developmental Services sells for the benefit of individuals receiving services in the state hospital or training center, provided that (i) most of the supplies, equipment, or products have been donated to the state hospital or training center; (ii) the individuals in the state hospital or training center have substantially altered the supplies, equipment, or products in the course of occupational or other therapy; and (iii) the substantial alterations have resulted in a finished product.

B. The Department shall establish procedures for the disposition of surplus materials from departments, divisions, institutions, and agencies of the Commonwealth. Such procedures shall:

1. Permit surplus materials to be transferred between or sold to departments, divisions, institutions, or agencies of the Commonwealth;

2. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge;

3. Permit public sales or auctions, including online public auctions;

4. Permit surplus motor vehicles to be sold prior to public sale or auction to local social service departments for the purpose of resale at cost to TANF recipients;

5. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as children's homes;

6. Permit donations to political subdivisions of the Commonwealth under the circumstances specified in this section;

7. Permit other methods of disposal when (a) the cost of the sale will exceed the potential revenue to be derived therefrom or (b) the surplus material is not suitable for sale;

8. Permit any animal especially trained for police work to be sold at a price of $1 to the handler who last was in control of the animal. The agency or institution may allow the immediate survivor of any full-time sworn law-enforcement officer who (i) is killed in the line of duty or (ii) dies in service and has at least 10 years of service to purchase the service animal at a price of $1. Any such sale shall not be deemed a violation of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.);

9. Permit the transfer of surplus clothing to an appropriate department, division, institution, or agency of the Commonwealth for distribution to needy individuals by and through local social services boards;

10. Encourage the recycling of paper products, beverage containers, electronics, and used motor oil;

11. Require the proceeds from any sale or recycling of surplus materials be promptly deposited into the state treasury in accordance with § 2.2-1802 and report the deposit to the State Comptroller;

12. Permit donations of surplus computers and related equipment to public schools in the Commonwealth and Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and providing services to persons with disabilities, at-risk youths, or low-income families. For the purposes of this subdivision, "at-risk youths" means school-age children approved eligible to receive free or reduced price meals in the federally funded lunch program;

13. Permit surplus materials to be transferred or sold, prior to public sale or auction, to public television stations located in the state and other nonprofit organizations approved for the distribution of federal surplus materials;

14. (Effective until October 1, 2016) Permit a public institution of higher education to dispose of its surplus materials at the location where the surplus materials are held and to retain any proceeds from such disposal, provided that the institution meets the conditions prescribed in subsection B of § 23-38.88 and § 23-38.112 (regardless of whether or not the institution has been granted any authority under Subchapter 3 (§ 23-38.91 et seq.) of Chapter 4.10 of Title 23);

14. (Effective October 1, 2016) Permit a public institution of higher education to dispose of its surplus materials at the location where the surplus materials are held and to retain any proceeds from such disposal, provided that the institution meets the conditions prescribed in subsection A of § 23.1-1002 and § 23.1-1019 (regardless of whether or not the institution has been granted any authority under Article 4 (§ 23.1-1004 et seq.) of Chapter 10 of Title 23.1);

15. Permit surplus materials from (i) the Department of Defense Excess Property Program or (ii) other surplus property programs administered by the Commonwealth to be transferred or sold to

Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as an educational institution devoted to emergency management training, preparedness, and response; and

16. Require, to the extent practicable, the recycling and disposal of computers and other information technology assets. Additionally, for computers or information technology assets that may contain confidential state data or personal identifying information of citizens of the Commonwealth, the Department shall ensure all policies for the transfer or other disposition of computers or information technology assets are consistent with data and information security policies developed by the Virginia Information Technologies Agency.

C. The Department shall dispose of surplus materials pursuant to the procedures established in subsection B or permit any department, division, institution, or agency of the Commonwealth to dispose of its surplus materials consistent with the procedures so established. No surplus materials shall be disposed of without prior consent of the head of the department, division, institution, or agency of the Commonwealth in possession of such surplus materials or the Governor.

D. Departments, divisions, institutions, or agencies of the Commonwealth or the Governor may donate surplus materials only under the following circumstances:

1. Emergencies declared in accordance with § 44-146.18:2 or 44-146.28;

2. As set forth in the budget bill as defined by § 2.2-1509, provided that (a) the budget bill contains a description of the surplus materials, the method by which the surplus materials shall be distributed, and the anticipated recipients, and (b) such information shall be provided by the Department to the Department of Planning and Budget in sufficient time for inclusion in the budget bill;

3. When the market value of the surplus materials, which shall be donated for a public purpose, is less than $500; however, the total market value of all surplus materials so donated by any department, division, institution, or agency shall not exceed 25 percent of the revenue generated by such department's, division's, institution's, or agency's sale of surplus materials in the fiscal year, except these limits shall not apply in the case of surplus computer equipment and related items donated to Virginia public schools; or

4. During a local emergency, upon written request of the head of a local government or a political subdivision in the Commonwealth to the head of a department, division, institution, or agency.

E. On or before October 1 of each year, the Department shall prepare, and file with the Secretary of the Commonwealth, a plan that describes the expected disposition of surplus materials in the upcoming fiscal year pursuant to subdivision B 6.

F. The Department may make available to any local public body of the Commonwealth the services or facilities authorized by this section; however, the furnishing of any such services shall not limit or impair any services normally rendered any department, division, institution or agency of the

Commonwealth. All public bodies shall be authorized to use the services of the Department's Surplus Property Program under the guidelines established pursuant to this section and the surplus property policies and procedures of the Department. Proceeds from the sale of the surplus property shall be returned to the local body minus a service fee. The service fee charged by the Department shall be consistent with the fee charged by the Department to state public bodies.

1996, cc. 935, 978, § 2.1-457.2; 1999, cc. 159, 578, 629, 911; 2000, cc. 615, 636, 661; 2001, c. 844; 2004, c. 670; 2005, cc. 933, 945; 2006, cc. 468, 493; 2007, c. 701; 2009, c. 75; 2012, cc. 476, 507, 805, 836; 2014, c. 226; 2016, cc. 298, 400.

§ 2.2-1125. Proceeds from the sale or recycling of surplus materials

A. The proceeds from the sale or recycling of surplus materials pursuant to § 2.2-1124 shall promptly be deposited into the state treasury and the deposit reported to the State Comptroller, along with a statement of total proceeds and the amount of the proceeds derived from the sale or recycling of surplus materials purchased in whole or in part from general fund appropriations.

B. At the end of each fiscal quarter, the State Comptroller shall (i) determine the total proceeds derived from the sale of surplus materials purchased in whole or in part from general fund appropriations and direct the State Treasurer to transfer fifty percent of the total of such proceeds to the Conservation Resources Fund and (ii) provide copies of the reports furnished to him pursuant to subsection A, or summaries thereof, to the Department of Planning and Budget.

C. Based on such reports, or summaries, the Department of Planning and Budget, pursuant to its authority in the appropriation act, may increase general fund appropriations to any department, division, institution, or agency of the Commonwealth by the amount of available proceeds derived from the sale or recycling of surplus materials pursuant to § 2.2-1124. The department, division, institution, or agency of the Commonwealth may use the additional appropriations to purchase materials, supplies, or equipment, or to defray the cost of disposing of surplus materials to the extent permitted pursuant to § 2.2-1124.

D. Departments, divisions, institutions, or agencies may retain the full net profits from the sale of recycled materials provided that a report is filed with the State Comptroller on or before October 1 of each year.

E. Departments, divisions, institutions, or agencies meeting management standards prescribed by the Governor may retain the net proceeds from the surplus materials sold pursuant to § 2.2-1124. Such retention shall be effective on July 1 following the determination that the department, division, institution, or agency meets the management standards.

1996, cc. 935, 978, § 2.1-457.3; 2001, c. 844.

§§ 2.2-1126, 2.2-1127. Repealed

Repealed by Acts 2004, c. 650.

§ 2.2-1128. (Effective until July 1, 2017) Sale of state flag

The Division shall have available at all times flags of the Commonwealth, to be offered for sale to the public in such manner and cost as the Division may determine.

1977, c. 672, § 2.1-468; 2001, c. 844.

§ 2.2-1128. (Effective July 1, 2017) Sale of state flag

The Division shall have available at all times flags of the Commonwealth, to be offered for sale to the public in such manner and cost as the Division may determine. The purchase of all flags of the Commonwealth by the Division shall comply with the provisions of § 2.2-4323.1.

1977, c. 672, § 2.1-468; 2001, c. 844; 2016, cc. 289, 297.

Article 4 - DIVISION OF ENGINEERING AND BUILDINGS

§ 2.2-1129. Division of Engineering and Buildings

A. Within the Department shall be established the Division of Engineering and Buildings (the "Division"), which shall exercise the powers and duties described in this article.

B. The Division shall have charge of all public buildings, grounds and all other property at the seat of government not placed in the charge of others, and shall protect such properties from depredations and injury.

C. Except as provided in § 2.2-1130, the Division shall have custody, control and supervision of the Virginia War Memorial Carillon.

D. To execute the duties imposed by this article, the Division may obtain information and assistance from other state agencies and institutions.

Code 1950, § 2-77.6; 1966, cc. 55, 677, §§ 2-65.1, 2.1-82.1, 2.1-103; 1970, c. 202; 1974, c. 27; 1976, c. 125; 1977, c. 672, §§ 2.1-480, 2.1-481, 2.1-492; 2000, cc. 599, 612; 2001, c. 844.

§ 2.2-1130. Care of Virginia War Memorial Carillon

A. Notwithstanding the provisions of subsections B and C of § 2.2-1129, the Director of the Department and the City of Richmond shall enter into an agreement that would allow the City to permit the use of or access to the Virginia War Memorial Carillon for such short-term events as the City deems appropriate. The agreement (i) may allow the City to charge and collect a fee for such use and to retain any such fee, and (ii) shall require the City to provide a report by December 1 of each year to the Director of the Department, in a form approved by the Director, detailing (a) the funds collected by the City for use of the Carillon for the preceding year; (b) the funds made available to the City from all sources; and (c) the City's expenditures for upkeep, maintenance, and improvement of the facility.

B. Notwithstanding the provisions of subsection H of § 2.2-1156 or any other law to the contrary, the proceeds from the lease or other conveyance of an interest in the Virginia War Memorial Carillon by the Department shall be paid to the City to be applied with other City funds for the cost of upkeep, maintenance, and improvement of the Virginia War Memorial Carillon. The proceeds are

hereby appropriated and shall be paid by the Comptroller to the City as soon as practicable after receipt by the Commonwealth.

C. All funds retained by the City or transferred to the City in accordance with this section and all fees collected by the City from use of or access to the Virginia War Memorial Carillon shall be paid into the City's treasury to the credit of a special fund that shall be used by the City solely for the upkeep, maintenance, and improvement of the Virginia War Memorial Carillon. Use of the special fund for any other purpose is prohibited.

D. Nothing in this section shall abrogate the obligations of the City of Richmond to provide for the upkeep and maintenance of the Carillon.

1966, c. 55, §§ 2-65.1, 2.1-82.1; 1970, c. 202; 1974, c. 27; 1976, c. 125; 1977, c. 672, § 2.1-481; 2000, cc. 599, 612; 2001, c. 844; 2009, c. 612.

§ 2.2-1131. Maintenance and utilization standards

The Division may develop, in cooperation with state institutions and agencies concerned, maintenance and utilization standards for state buildings, and provide functional direction and service to institutions and agencies of the state government with respect to their policies, practices and administration of buildings and grounds. The standards shall include, but are not limited to, advice and appropriate provisions for the installation and utilization of approved water-conservation devices throughout the facilities owned by the Commonwealth. The Division shall review all maintenance and utilization standards and plans of state institutions and agencies.

1966, c. 55, §§ 2-65.1, 2.1-82.1; 1970, c. 202; 1974, c. 27; 1976, c. 125; 1977, c. 672, § 2.1-482; 1978, cc. 139, 770; 2001, c. 844.

§ 2.2-1131.1. Establishment of performance standards for the use of property

A. The Department shall establish performance standards for the acquisition, lease and disposition of property and for the management and utilization of such property at the individual agency and statewide levels to maximize the use of property for which it is held. For the purposes of this section "property" means the same as that term is defined in § 2.2-1147.

B. The head of each state agency or institution shall ensure that property assets held by the agency on behalf of the Commonwealth are managed in accordance with the standards set by the Department. State public institutions of higher education that have delegated authority to manage aspects of their real property usage and have signed a memorandum of understanding with the Secretary of Administration related to such delegated authority shall be deemed in compliance with the standards set by the Department as long as they abide by the terms of the memorandum of understanding. Standards established in accordance with the memorandum of understanding shall be reported to the Department by October 1 of each year.

C. The Department may take appropriate actions, including assuring compliance with the standards set by the Department and entering into leasing arrangements or other contracts, to ensure that asset usage by each state agency is proper and cost effective.

D. No later than November 30 of each year, the Department shall report to the Governor and the General Assembly on the implementation and effectiveness of this program.

2004, cc. 684, 750; 2009, c. 612.

§ 2.2-1132. Administration of capital outlay construction; exception for certain educational institutions

A. The Division shall provide assistance in the administration of capital outlay construction projects set forth in the appropriation act, other than highway construction undertaken by the Department of Transportation and the acquisition or improvement of specialized cargo-handling equipment and related port infrastructure including, but not limited to, port construction, renovation, and demolition that is required in a timely manner to meet market demands to enhance commerce through the Virginia Port Authority, the review and approval of plans and specifications, and acceptance of completed projects.

B. The Division may establish standards, as needed, for construction by the Commonwealth and may, with the advice of the Attorney General, establish standard contract provisions and procedures for the procurement and administration of construction and for the procurement and administration of architectural and engineering services relating to construction, which shall be used by all departments, agencies and institutions of the Commonwealth. All departments, agencies and institutions of the Commonwealth shall ensure that the design and construction of state-owned buildings comply with the standards governing energy use and efficiency established by the Division. The standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the Commonwealth when project costs are reduced by the contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining the cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

C. (Effective until October 1, 2016) Notwithstanding any standards established by the Division or law to the contrary except as provided in this subsection, any public institution of higher education that has in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act may enter into contracts for specific construction projects without the preliminary review and approval of the Division, provided such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and utilize the general terms and conditions for those forms of procurement approved by the Division and the Office of the Attorney General. The authority granted in this subsection shall only become effective if the institution meets the conditions prescribed in subsection B of § 23-38.88. The Secretary of Administration shall establish guidelines to assist institutions in evaluating alternative project delivery methods prior to entering into a contract. For projects constructed pursuant to this subsection, the responsibility of the Division of Engineering and Buildings shall be as set forth in subsection C of § 36-98.1.

C. (Effective October 1, 2016) Notwithstanding any standards established by the Division or law to the contrary except as provided in this subsection, any public institution of higher education that has in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act may enter into contracts for specific construction projects without the preliminary review and approval of the Division, provided such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and utilize the general terms and conditions for those forms of procurement approved by the Division and the Office of the Attorney General. The authority granted in this subsection shall only become effective if the institution meets the conditions prescribed in subsection A of § 23.1-1002. The Secretary of Administration shall establish guidelines to assist institutions in evaluating alternative project delivery methods prior to entering into a contract. For projects constructed pursuant to this subsection, the responsibility of the Division of Engineering and Buildings shall be as set forth in subsection C of § 36-98.1.

For purposes of this section, "construction" shall include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned or to be acquired by the Commonwealth. It shall not include buildings or other facilities ancillary to the use of state highways that are located within the right-of-way of any state highway, or assets for use by the Virginia Port Authority within the boundaries of property owned or leased by the Virginia Port Authority.

1982, c. 647, § 2.1-483.1; 1984, c. 641; 1994, c. 924; 1997, c. 488; 2001, c. 844; 2005, cc. 933, 945; 2006, c. 939.

§ 2.2-1133. Use of value engineering

A. The Division shall ensure that value engineering is employed for any capital project costing more than $5 million. Value engineering may also be used for any project costing $5 million or less. For purposes of this section, "value engineering" means a systematic process of review and analysis of a capital project by a team of persons not originally involved in the project. Such team, which shall include appropriate professionals licensed in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1, may offer suggestions that would improve project quality and reduce total project cost by combining or eliminating inefficient or expensive parts or steps in the original proposal or by totally redesigning the project using different technologies, materials, or methods.

B. The review developed pursuant to subsection A shall be compiled in a value engineering report and submitted to the Division. Each item included in the value engineering report shall have a status designation of accepted, declined, or accepted as modified. The Division, within 45 days, must approve the value engineering report before the project may move to the next phase of design.

C. A value engineering report shall not be required for projects that (i) are designed utilizing either the design-build or construction management at risk basis and (ii) have the value engineering process as an integral component. In such cases, a written summary of the cost savings that have been incorporated into the design shall be provided to the Division prior to moving forward to the construction phase of the contract.

D. The Director of the Department may waive the requirements of this section for any proposed capital project for compelling reasons. Any waiver shall be in writing, state the reasons for the waiver, and apply only to a single capital project. On or before September 15 of each year, the Director of the Department shall report to the Governor and the General Assembly on the (i) number and value of the capital projects where value engineering was employed and (ii) identity of the capital projects for which a waiver of the requirements of this section was granted, including a statement of the compelling reasons for granting the waiver. The report shall cover projects completed or for which a waiver was granted within the previous fiscal year.

E. Notwithstanding any law to the contrary, the provisions of this section shall apply to public institutions of higher education in Virginia.

1994, cc. 442, 829, § 2.1-483.1:1; 1996, c. 553; 1997, c. 230; 1998, c. 207; 2001, c. 844; 2008, c. 370; 2015, c. 572.

§ 2.2-1134. Repealed

Repealed by Acts 2011, cc. 594 and 681, cl. 2.

§ 2.2-1135. Information on equipment utilizing wood wastes

The Division shall assemble and maintain information relevant to a determination by any department, agency, or institution regarding the suitability of using a central boiler or other heating equipment that is fueled by wood wastes, including but not limited to the (i) identity of manufacturers and suppliers of wood waste handling and burning equipment, (ii) capital and operating costs of such equipment, (iii) associated air emissions and solid waste disposal requirements, and (iv) fuel storage requirements. The information shall be distributed to any department, agency, or institution with a construction project specifying a central boiler or heating plant, and to personnel involved in the procurement and administration of architectural and engineering services relating to such construction project. For purposes of this section, "wood wastes" means raw wood by-products from wood processing and wood product manufacturing industries, including sawdust, chips, bark, and planer shavings.

1993, c. 691, § 2.1-483.2; 2001, c. 844.

§ 2.2-1136. Review of easements; maintenance of real property records

A. The Department shall review all deeds, leases and contractual agreements with utilities to serve state institutions or agencies that require the approval of the Governor, as well as all easements and rights-of-way granted by institutions and agencies to public and private utilities.

B. The Department shall be responsible for the maintenance of real property records of all state departments, agencies and institutions, except records of real property acquired by the Department of Transportation for the construction of highways, and may have such boundary, topographic and other maps prepared as may be necessary. In addition, the Department shall develop the criteria for and conduct an inventory of all real property, as defined in § 2.2-1147, owned by state departments, agencies and institutions by January 1, 2012, and update the inventory at least annually thereafter. Such inventory shall be reviewed by the Department in developing recommendations pursuant to subsection A of § 2.2-1153. All state departments, agencies and institutions shall cooperate with the Department and provide such data and documents as may be required to develop and maintain the records and inventory required by this section.

C. The Department shall make the inventory referred to in subsection B available on the Department's website. The description of the inventory shall include parcel identification consistent with national spatial data standards in addition to a street address as available and reported to the Department by agencies and institutions.

1966, c. 55, §§ 2-65.1, 2.1-82.1; 1970, c. 202; 1974, c. 27; 1976, c. 125; 1977, c. 672, § 2.1-484; 1978, c. 770; 2001, c. 844; 2009, c. 612; 2011, cc. 659, 675; 2014, c. 211.

§ 2.2-1137. Location, construction or lease of state consolidated office buildings

The Department shall be responsible for the location and construction or lease of state consolidated office buildings at the seat of government and throughout the Commonwealth for joint use by state agencies, departments and institutions.

1966, c. 55, §§ 2-65.1, 2.1-82.1; 1970, c. 202; 1974, c. 27; 1976, c. 125; 1977, c. 672, § 2.1-485; 2001, c. 844; 2009, c. 612; 2012, cc. 803, 835.

§ 2.2-1138. Planning and construction by Division; exemption

A. The Division of Engineering and Buildings shall, subject to written approval of the Governor:

1. Prepare and, when necessary to meet changing conditions, amend a long-range site plan for the location of all state buildings, and related improvements, in Capitol Square and its immediate environs, and for such other areas providing comparable facilities for the seat of government in or adjacent to the City of Richmond as the Governor shall direct;

2. Acquire with funds appropriated for that purpose the necessary land for effectuation of the plan; and

3. Direct and control the execution of all authorized projects for the construction of state buildings and related improvements in or adjacent to the City of Richmond.

B. The Governor may exempt from the provisions of subsection A those buildings and improvements that, in his opinion, should be planned and constructed under the direction of other state agencies or institutions or included in site plans prepared by such other agencies or institutions.

C. No building for state use shall be erected or acquired nor other property acquired for state use, in Capitol Square and its immediate environs, or in such other areas as may be included in the site plan required by subsection A unless it has been approved by the Governor as conforming to the site plan.

Code 1950, §§ 2-77.2, 2-77.3, 2-77.4; 1966, cc. 55, 677, §§ 2.1-99, 2.1-100, 2.1-102; 1977, c. 672, §§ 2.1-489, 2.1-490, 2.1-491; 1979, c. 234; 2001, c. 844.

§ 2.2-1139. Transfer of funds; acceptance of donations

The Governor may transfer to the Department for use by the Division funds appropriated to any state department, agency or institution for the construction, alteration, reconstruction and repair of any building to be erected or acquired for the use of such department, institutional agency, or for the acquisition of land for such building, or for planning, architectural, engineering or other studies in connection therewith, and may accept funds donated for such purposes.

Code 1950, § 2-77.7; 1966, cc. 55, 677, § 2.1-104; 1977, c. 672, § 2.1-493; 2001, c. 844.

§ 2.2-1140. Assignment of office space

The Division shall be responsible for the assignment of office space to agencies at the seat of government and buildings under control of the Division, and for the establishment of standards for the utilization and furnishing of such space.

1966, c. 55, § 2-65.1, 2.1-82.1; 1970, c. 202; 1974, c. 27; 1976, c. 125; 1977, c. 672, § 2.1-495; 2001, c. 844.

§ 2.2-1141. Purchase of furniture for state buildings; repairs to buildings and furniture; surplus furniture

The Division shall cause to be purchased through the Division of Purchases and Supply with the approval of the Governor, all furniture required for the buildings within the master site plan of Capitol Square, except those assigned for use by agencies and departments. The Division shall have all repairs made to either buildings or furniture thereof, as may be approved by the Governor. The cost of the repairs and furniture shall be paid with funds approved by the Governor. The Division shall declare surplus that furniture that may no longer be satisfactorily used.

Code 1950, § 2-67; 1966, c. 677, § 2.1-85; 1972, c. 763; 1977, c. 672, § 2.1-496; 2001, c. 844.

§ 2.2-1142. Furniture for Executive Mansion

The Division shall requisition for the Executive Mansion the furniture required by the Governor, and cause to be sold such old furniture as the Governor may direct, taking care not to exceed appropriated sums therefor, in addition to the proceeds of old furniture sold. An account both of the sales and purchases shall be returned to the Comptroller before any warrant shall issue for any part of the sum appropriated. The warrant shall be only so much as by the account appears to be proper.

Code 1950, § 2-69; 1966, c. 677, § 2.1-87; 1970, c. 260; 1977, c. 672, § 2.1-497; 2001, c. 844.

§ 2.2-1143. Services for Capitol and other state facilities

The Division shall contract for water, electricity, gas, sewer service, fuel for heating, and such other services required to serve the facilities within the master site plan of Capitol Square and for such other facilities as the Governor may designate. The cost of the services shall be paid out of funds appropriated for that purpose.

Code 1950, § 2-70; 1966, c. 677, § 2.1-88; 1972, c. 763; 1974, c. 27; 1977, c. 672, § 2.1-498; 2001, c. 844.

§ 2.2-1144. Control of Capitol Square and other property at seat of government

A. The Division, under the direction and control of the Governor, shall have control of the Capitol Square with the expense of the maintenance and control to be paid out of the fund appropriated for that purpose. The Division shall keep the keys of the Capitol Building and shall take charge of all the rooms in the Capitol Building, except in those areas under the control of the legislature, the public grounds and all other property at the seat of government not placed in specific charge of others. The Division shall have no control or responsibility with respect to the old and new Senate chambers, the old and new halls of the House of Delegates, the Rotunda, the offices of the Clerks of the Senate and House of Delegates, the legislative committee rooms, the enrolling office, or any other area specifically designated as legislative space. The Division shall do such work and make such repairs for the respective bodies of the General Assembly requested by the clerks thereof with appropriate reimbursement of expenses to the Division.

B. The Division shall have all the furniture and the rooms in the Capitol, other than the rooms excepted in subsection A, the open parts of the Capitol, the public grounds, and all other property at the seat of government not placed in the charge of others, kept in proper order at all times.

Code 1950, §§ 2-71, 2-73; 1966, c. 677, §§ 2.1-89, 2.1-91; 1974 c. 27; 1977, c. 672, §§ 2.1-499, 2.1-500; 2001, c. 844.

§ 2.2-1145. Inventory of property and Governor's house; custody of house and property pending election of Governor

When the term of office of any Governor expires, or he shall die or resign, the Division shall take an inventory of all the public property and furniture in the Governor's house and outbuildings and deliver the inventory to the Comptroller, to be preserved in his office. The Division shall, unless the house is occupied by the Lieutenant Governor, have charge of the house, furniture, and other public property, until a Governor is elected and takes possession.

Code 1950, § 2-68; 1966, c. 677, § 2.1-86; 1977, c. 672, § 2.1-501; 2001, c. 844.

§ 2.2-1146. Department may lease certain state property; approval of leases by Attorney General; disposition of rentals

The Department, with the written approval of the Governor, may lease land, buildings and any portions thereof owned by the Commonwealth and under the control of the Department, when such land, buildings, or portions thereof are in excess of current and foreseeable needs of the

Department. All such leases shall be executed in the name of the Commonwealth and shall be in a form approved by the Attorney General. The leases may run for such time as may be approved by the Governor and shall be for appropriate rental. All rentals received shall be retained by the Department and used for paying the costs of entering and administering such leases and for off-setting the costs of maintaining and operating the facilities under control of the Department. Notwithstanding any law to the contrary or how title to the property was acquired, the deed or lease shall be executed on behalf of the Commonwealth by the Director of the Department or his designee, and such action shall not create a cloud on the title to the property. The terms of the lease shall be subject to the written approval of the Governor or his designee.

1962, c. 262, § 2-66.2; 1966, cc. 55, 677, § 2.1-84; 1977, c. 672, § 2.1-503; 2001, c. 844; 2009, c. 612.

§ 2.2-1147. Definitions

As used in §§ 2.2-1147.1 through 2.2-1156, unless the context requires a different meaning:

"Institutions" includes, but is not limited to, any corporation owned by the Commonwealth and subject to the control of the General Assembly.

"Property" means an interest in land and any improvements thereon held by the Commonwealth and under the control of or occupied by any of its departments, agencies, or institutions but does not include (i) real estate or rights-of-way acquired by the Department of Transportation for the construction of highways; (ii) ungranted shores of the sea, marsh, and meadowlands as defined in § 28.2-1500; or (iii) real estate or rights-of-way acquired by the Department of Rail and Public Transportation for the construction of railway lines or rail or public transportation facilities or the retention of rail corridors for public purposes.

"Recommend, " "recommended, " or "recommendation, " when used with reference to a recommendation by the Department of General Services to the Governor, means to advise either for or against a proposed action.

1968, c. 717, § 2.1-106.1; 1977, c. 672, § 2.1-504; 1978, c. 770; 1984, c. 641; 1995, c. 850; 2001, c. 844; 2002, c. 561; 2016, c. 425.

§ 2.2-1147.1. Right to breast-feed

Notwithstanding any other provision of law, a woman may breast-feed her child at any location where that woman would otherwise be allowed on property that is owned, leased or controlled by the Commonwealth as defined in § 2.2-1147.

2002, c. 561.

§ 2.2-1147.2. Equal access to state-owned or controlled property; Boy Scouts of America and Girl Scouts of the USA

Notwithstanding any contrary provision of law, general or special, no state department, agency, or institution providing access and opportunity to use real property that is owned, leased, or

controlled by the Commonwealth as defined in § 2.2-1147, may deny equal access or a fair opportunity to use such real property to, or otherwise discriminate against, the Boy Scouts of America or the Girl Scouts of the USA. Nothing in this paragraph shall be construed to require any state department, agency, or institution to sponsor the Boy Scouts of America or the Girl Scouts of the USA, or to exempt any such groups from policies governing access to and use of the real property.

2006, c. 57.

§ 2.2-1148. Approval of actions; conveyances in name of the Commonwealth

A. All actions to be taken or approvals to be given by the Governor or the Attorney General pursuant to §§ 2.2-1149 through 2.2-1156 may be taken or given by the Governor or his designee, or by the Attorney General or one of his deputies or assistant attorneys general.

B. All conveyances of any interest in property to or from the Commonwealth or any state department or agency or any state institution that is not a corporation, shall be in the name of the Commonwealth and shall designate the department, agency or institution in control or possession of the property in the following manner: "Commonwealth of Virginia, Department of (name of department, agency or institution, or other appropriate name)." All interests in property conveyed to any department, agency or institution of the Commonwealth, whether past or future, is and shall be the property of the Commonwealth. Conveyance of an interest in property on behalf of the Commonwealth by a department, agency or institution other than that which acquired title on behalf of the Commonwealth shall not create a cloud upon the title.

1984, c. 641, § 2.1-504.1; 2001, c. 844.

§ 2.2-1149. Department to review proposed acquisitions of real property; approval by the Governor; exceptions

Notwithstanding any provision of law to the contrary, no state department, agency or institution shall acquire real property by gift, lease, purchase or any other means or use or occupy real property without following the guidelines adopted by the Department and obtaining the prior approval of the Governor. The Department shall review every proposed acquisition of real property by gift, lease, purchase or any other means and every proposed use or occupancy of real property by any department, agency or institution of the Commonwealth and recommend either approval or disapproval of the transactions to the Governor based on cost, demonstrated need, and compliance with the Department's guidelines.

The provisions of this section shall not apply to the:

1. Acquisition of real property for open space preservations pursuant to the purposes of § 10.1-1800 and subdivision A 4 of § 10.1-2204, if it does not require as a condition of acceptance, an appropriation of any state funds for the continued maintenance of such property;

2. Acquisition of easements pursuant to the purposes of §§ 10.1-1020 and 10.1-1021 or §§ 10.1-1700, 10.1-1702, and 10.1-1702;

3. Acquisition through the temporary lease or donation of real property for a period of six months or less duration;

4. (Effective until October 1, 2016) Acquisition of easements by public institutions of higher education provided that the particular institution meets the conditions prescribed in subsection B of § 23-38.88;

4. (Effective October 1, 2016) Acquisition of easements by public institutions of higher education provided that the particular institution meets the conditions prescribed in subsection A of § 23.1-1002;

5. (Effective until October 1, 2016) Entering into an operating/income lease or a capital lease by a public institution of higher education, for real property to be used for academic purposes, or for real property owned by the institution or a foundation related to the institution to be used for non-academic purposes, in accordance with the institution's land use plan pursuant to § 2.2-1153 provided that (i) the capital lease does not constitute tax-supported debt of the Commonwealth, (ii) the institution meets the conditions prescribed in subsection B of § 23-38.88, and (iii) for purposes of entering into a capital lease, the institution shall have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act. For the purposes of this subdivision, an operating/income lease or a capital lease shall be determined using generally accepted accounting principles;

5. (Effective October 1, 2016) Entering into an operating/income lease or a capital lease by a public institution of higher education, for real property to be used for academic purposes, or for real property owned by the institution or a foundation related to the institution to be used for non-academic purposes, in accordance with the institution's land use plan pursuant to § 2.2-1153 provided that (i) the capital lease does not constitute tax-supported debt of the Commonwealth, (ii) the institution meets the conditions prescribed in subsection A of § 23.1-1002, and (iii) for purposes of entering into a capital lease, the institution shall have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act. For the purposes of this subdivision, an operating/income lease or a capital lease shall be determined using generally accepted accounting principles;

6. Acquisition of real property for the construction, improvement or maintenance of highways and transportation facilities and purposes incidental thereto by the Department of Transportation; however, acquisitions of real property by the Department of Transportation for office space, district offices, residencies, area headquarters, or correctional facilities shall be subject to the Department's review and the Governor's approval; or

7. Acquisition of real estate or rights-of-way for the construction, improvement, or maintenance of railway lines or rail or public transportation facilities or the retention of rail corridors for public

purposes associated with the efforts of the Department of Rail and Public Transportation; however, acquisitions of real estate or rights-of-way by the Department of Rail and Public Transportation for office space or district offices shall be subject to review by the Department and the approval of the Governor.

1984, c. 641, § 2.1-504.2; 1994, c. 474; 2000, c. 748; 2001, c. 844; 2005, cc. 933, 945; 2011, c. 525; 2016, c. 425.

§ 2.2-1150. Conveyance and transfers of real property by state agencies; approval of Governor and Attorney General; notice to members of General Assembly

A. When it is deemed to be in the public interest.

1. Property owned by the Commonwealth may be sold, leased, or other interests therein conveyed to political subdivisions, public authorities, or the federal government, for such consideration as is deemed proper; and

2. Property owned by the Commonwealth and held in the possession of a department, agency or institution of the Commonwealth may be transferred to the possession of another department, agency or institution of the Commonwealth by the execution of an agreement between the heads of such departments, agencies or institutions.

B. No transaction authorized by this section shall be made without the prior written recommendation of the Department to the Governor, the written approval of the Governor of the transaction itself, and the approval of the Attorney General as to the form of the instruments prior to execution.

Prior to entering into any negotiations for the conveyance or transfer of any portion of Camp Pendleton or any military property that has been or may be conveyed to the Commonwealth pursuant to a recommendation by the Defense Base Closure Realignment Commission, the Department shall give written notice to all members of the General Assembly within the planning district in which such property is located. If, within 30 days of receipt of the Department's notice, 25 percent of such members of the General Assembly give notice to the Department that they object to such conveyance or that they require additional information, the Department shall conduct a meeting, with written notice thereof to all members of the General Assembly within that planning district, at which the Department and such members shall discuss the proposed transaction. Members of the General Assembly objecting to the proposed transaction after the meeting shall convey their objections in detail to the Governor, who shall consider the objections. Certification of compliance with the foregoing requirements by the Governor in a deed or other instrument conveying or transferring any portion of Camp Pendleton or any such military property, absent knowledge by the purchaser or transferee to the contrary, shall serve as prima facie evidence of compliance with this subsection.

C. (Effective until October 1, 2016) Notwithstanding the provisions of subsection B, a public institution of higher education may convey an easement pertaining to any property such institution

owns or controls provided that the institution meets the conditions prescribed in subsection B of § 23-38.88 and § 23-38.112 (regardless of whether or not the institution has been granted any authority under Subchapter 3 (§ 23-38.91 et seq.) of Chapter 4.10 of Title 23).

C. (Effective October 1, 2016) Notwithstanding the provisions of subsection B, a public institution of higher education may convey an easement pertaining to any property such institution owns or controls provided that the institution meets the conditions prescribed in subsection A of § 23.1-1002 and § 23.1-1019 (regardless of whether or not the institution has been granted any authority under Article 4 (§ 23.1-1004 et seq.) of Chapter 10 of Title 23.1).

1984, c. 641, §§ 2.1-504.3, 2.1-504.4; 1986, c. 536; 1989, c. 710; 1996, c. 442; 2001, c. 844; 2005, cc. 933, 945; 2007, c. 624.

§ 2.2-1150.1. Lease or conveyance of any interest in State Police communication tower

Proceeds and any in-kind goods or services received from all sales or leases or conveyances of any interest in Department of State Police communication towers received pursuant to §§ 2.2-1150.2, 2.2-1151, and 2.2-1156, above the costs of the transaction, shall be deposited into a special account of the Department of State Police to be used to operate, acquire, construct, maintain, repair, or replace communication towers or sites.

2002, c. 477; 2008, cc. 676, 690; 2010, c. 286.

§ 2.2-1150.2. Use of communication towers for deployment of wireless broadband services in unserved areas of the Commonwealth

A. As used in this section:

"Qualified provider" means a provider of wireless broadband service that has obtained all governmental approvals required for the provision of wireless broadband service in the unserved area in which it seeks to provide such service.

"Unserved area" means any area within the Commonwealth that is demonstrated not to have access to terrestrial broadband or radio frequency Internet service.

"Wireless broadband service" means an Internet connection service capable of transmitting information at a rate that is not less than 256 kilobits per second in at least one direction using a wireless link between a fixed location and the Internet service provider's facility. It does not include wireless fidelity technology used in conjunction with dedicated subscriber line service or cable service to connect devices within a facility to the Internet via a broadband connection.

B. Notwithstanding any provision of § 2.2-1156 to the contrary, any state department, agency, or institution having responsibility for a state-owned communication tower in an unserved area, subject to guidelines adopted by the Department, shall lease or convey a license or other interest in the communication tower to a qualified provider in order to permit the use of the communication tower by the qualified provider in its deployment of wireless broadband service within the

unserved area or portion thereof. This requirement is subject to the qualified provider presenting to the Department:

1. A spectrum and certified structural analysis of the tower that demonstrates that:

a. The new service will not interfere with current equipment;

b. No structural element is beyond 85 percent capacity based on current and previously documented future loads; and

c. The tower meets the industry standards set forth by ANSI/TIA/EIA 222-F; and

2. Proof that the tower satisfies all applicable local government requirements.

C. The Department shall adopt guidelines for (i) determining whether a provider of wireless broadband service is qualified to provide such service and (ii) requesting a state department, agency, or institution to enter into a lease or other conveyance of an interest in a communication tower or site pursuant to this section.

D. The lease or other conveyance shall be for such consideration as the Director of the Department deems appropriate, which consideration shall not be required to be commensurate with the consideration paid for use of comparable space on similar towers. The lease or other conveyance may include shared use of the facilities by other political subdivisions or persons providing the same or similar services, and by departments, agencies, or institutions of the Commonwealth.

E. The provisions of § 2.2-1156 as they apply to lease agreements or conveyances of any interest shall not apply to any transaction undertaken pursuant to this section.

F. No transaction authorized by this section shall be made without the prior approval of the Director of the Department and the approval of the Attorney General as to the form of any conveyancing instrument prior to execution.

2008, cc. 676, 690; 2015, c. 351.

§ 2.2-1151. Conveyance of easements and appurtenances thereto to cable television companies, utility companies, public service companies, political subdivisions by state departments, agencies or institutions; communication towers

A. When it is deemed to be in the public interest and subject to guidelines adopted by the Department:

1. Any state department, agency or institution, through its executive head or governing board may convey to public utility companies, public service corporations or companies, political subdivisions or cable television companies, right-of-way easements over property owned by the Commonwealth and held in its possession and any wires, pipes, conduits, fittings, supports and appurtenances thereto for the transmission of electricity, telephone, cable television, water, gas, steam, or sewage placed on, over or under the property.

2. Any state department, agency or institution having responsibility for a state-owned office building, through its executive head or governing board, may lease space to a credit union in the building for the purpose of providing credit union services that are readily accessible to state employees. The lease shall be for a term of not more than five years, with annual renewals or new leases permitted thereafter. Such lease may be granted for no consideration or for less than the fair market value.

3. Property owned by the Commonwealth may be sold or leased or other interests or rights therein granted or conveyed to political subdivisions or persons providing communication or information services for the purpose of erecting, operating, using or maintaining communication towers, antennas, or other radio distribution devices. If any tower proposed to be erected on property owned by the Commonwealth is to be used solely by private persons providing communication or information services, and there is no immediate use planned or anticipated by any department, agency or institution of the Commonwealth or political subdivision, the guidelines shall provide a means to obtain comments from the local governing body where the property is located. The conveyances shall be for such consideration as the Director of the Department deems appropriate, and may include shared use of the facilities by other political subdivisions or persons providing the same or similar services, and by departments, agencies, or institutions of the Commonwealth.

B. No transaction authorized by this section shall be made without the prior written recommendation by the Department to the Governor, the written approval by the Governor of the transaction itself, and the approval by the Attorney General as to the form of the instruments prior to execution.

C. This section shall not (i) apply to any lease or conveyance of a license or other interest in a communication tower for use in the deployment of wireless broadband service within an unserved area of the Commonwealth made pursuant to § 2.2-1150.2 or (ii) be construed to alter the control or ownership of towers currently maintained by other agencies of the Commonwealth.

1984, c. 641, § 2.1-504.4; 1986, c. 536; 1989, c. 710; 1996, c. 442; 2001, c. 844; 2008, cc. 356, 676, 690.

§ 2.2-1151.1. Conveyances of right-of-way usage to certain nonpublic service companies by the Department of Transportation

A. As used in this section:

"Department" means the Virginia Department of Transportation.

"Developer" means a person who undertakes to develop real estate.

B. No land use permit shall be issued by the Department to any company other than a public service company as defined in § 56-76, a company owning or operating an interstate natural gas pipeline, or a franchised cable television systems operator owning or operating a utility line as defined in § 56-265.15, unless such company has (i) registered as an operator with the appropriate

notification center as defined by § 56-265.15 and (ii) notified the commercial and residential developer, owner of commercial, multifamily or residential real estate, or local government entities with a property interest in any parcel of land located adjacent to the property over which the land use is being requested, that application for the permit has been made. Any permit application approved by the Department shall include an affidavit indicating compliance with the registration and notification requirements provided by this subsection.

C. The provisions of subsection B shall not apply to a land use permit issued by the Department to a person providing utility service solely for their own agricultural or residential use, provided the utilities are located on property owned by the person and the utilities are marked in accord with requirements established by the Department.

D. No performance surety held by the Department in association with a land use permit issued to a company pursuant to subsection B to perform work within the Department's right-of-way shall be released until such time as all claims against the company associated with the work have been resolved, provided a claimant has notified the Department of a claim against such company within 30 days after completion of the work. A claimant shall have no more than one year after the notification is received by the Department to complete any action against the company associated with the work for which the claim has been made. After the expiration of the one-year period, the Department may release the performance surety.

E. Nothing in this section shall be construed or interpreted to create a cause of action or administrative claim against the Department.

2003, c. 330; 2004, c. 636; 2014, c. 277.

§ 2.2-1152. Conveyances to Department of Transportation by state institutions or public corporations owned by Commonwealth

Any state institution or public corporation whose funds and property are owned solely by the Commonwealth may through its governing board convey to the Virginia Department of Transportation the lands necessary for highway purposes or other incidental uses, either for such consideration deemed proper or in exchange for other lands, and to execute the instruments necessary to effectuate the conveyance.

No transaction authorized by this section shall be made without the prior written recommendation of the Department to the Governor, the written approval of the Governor of the transaction itself, and the approval of the Attorney General as to the form of the instruments prior to execution.

The proceeds from the sale, with the written approval of the Governor, may be used by the state institution or public corporation for the purchase of other property or for capital improvements.

1984, c. 641, § 2.1-504.5; 2001, c. 844.

§ 2.2-1153. State agencies and institutions to notify Department of property not used or required; criteria

A. Whenever any department, agency or institution of state government possesses or has under its control state-owned or leased property that is not being used to full capacity or is not required for the programs of the department, agency or institution, it shall so notify the Department. Such notification shall be in a form and manner prescribed by the Department. Each department, agency and institution shall submit to the Department a land use plan for state-owned property it possesses or has under its control showing present and planned uses of such property. Such plan shall be approved by the cognizant board or governing body of the department, agency or institution holding title to or otherwise controlling the state-owned property or the agency head in the absence of a board or governing body, with a recommendation on whether any property should be declared surplus by the department, agency or institution. Development of such land use plans shall be based on guidelines promulgated by the Department. The guidelines shall provide that each land use plan shall be updated and copies provided to the Department by September 1 of each year. The Department may exempt properties that are held and used for conservation purposes from the requirements of this section. The Department shall review the land use plans, the records and inventory required pursuant to subsection B of § 2.2-1136 and such other information as may be necessary and determine whether the property or any portion thereof should be declared surplus to the needs of the Commonwealth. By October 1 of each year, the Department shall provide a report to the Chairmen of the House Appropriations and Senate Finance Committees setting forth the Department's findings, the sale or marketing of properties identified pursuant to this section, and recommending any actions that may be required by the Governor and the General Assembly to identify and dispose of property not being efficiently and effectively utilized. The Department shall provide a listing of surplus properties on the Department's website. The description of surplus property shall include parcel identification consistent with national spatial data standards in addition to a street address.

Until permanent disposition of the property determined to be surplus is effected, the property shall continue to be maintained by the department, agency or institution possessing or controlling it, unless upon the recommendation of the Department, the Governor authorizes the transfer of the property to the possession or control of the Department. In this event, the department, agency or institution formerly possessing or controlling the property shall have no further interest in it.

B. The Department shall establish criteria for ascertaining whether property under the control of a department, agency or institution should be classified as "surplus" to its current or proposed needs. Such criteria shall provide that the cognizant board or governing body, if any, of the department, agency or institution holding the title to or otherwise controlling the state-owned property, or the agency head in the absence of a board or governing body, shall approve the designation of the property as surplus.

C. Notwithstanding the provisions of subsection A:

1. The property known as College Woods, which includes Lake Matoaka and is possessed and controlled by a college founded in 1693, regardless of whether such property has been declared surplus pursuant to this section, shall not be transferred or disposed of without the approval of the board of visitors of such college by a two-thirds vote of all board members at a regularly scheduled board meeting. The General Assembly shall also approve the disposal or transfer.

2. (Effective until October 1, 2016) Surplus real property valued at less than $5 million that is possessed and controlled by a public institution of higher education may be sold by such institution, provided that (i) at least 45 days prior to executing a contract for the sale of such property, the institution gives written notification to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees; and (ii) the Governor may postpone the sale at any time up to 10 days prior to the proposed date of sale. Such sale may be effected by public auction, sealed bids, or by marketing through one or more Virginia licensed real estate brokers after satisfying the public notice provisions of subsection A of § 2.2-1156. The terms of all negotiations resulting in such sale shall be public information. The public institution of higher education may retain the proceeds from the sale of such property if the property was acquired by nongeneral funds. If the institution originally acquired the property through a mix of general and nongeneral funds, 50 percent of the proceeds shall be distributed to the institution and 50 percent shall be distributed to the State Park Conservation Resources Fund established under subsection A of § 10.1-202. The authority of a public institution of higher education to sell surplus real property described under this subdivision or to retain any proceeds from the sale of such property shall be subject to the institution meeting the conditions prescribed in subsection B of § 23-38.88 and § 23-38.112 (regardless of whether or not the institution has been granted any authority under Subchapter 3 (§ 23-38.91 et seq.) of Chapter 4.10 of Title 23).

2. (Effective October 1, 2016) Surplus real property valued at less than $5 million that is possessed and controlled by a public institution of higher education may be sold by such institution, provided that (i) at least 45 days prior to executing a contract for the sale of such property, the institution gives written notification to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees; and (ii) the Governor may postpone the sale at any time up to 10 days prior to the proposed date of sale. Such sale may be effected by public auction, sealed bids, or by marketing through one or more Virginia licensed real estate brokers after satisfying the public notice provisions of subsection A of § 2.2-1156. The terms of all negotiations resulting in such sale shall be public information. The public institution of higher education may retain the proceeds from the sale of such property if the property was acquired by nongeneral funds. If the institution originally acquired the property through a mix of general and nongeneral funds, 50 percent of the proceeds shall be distributed to the institution and 50 percent shall be distributed to the State Park Conservation Resources Fund established under subsection A of § 10.1-202. The authority of a public institution of higher education to sell surplus real property described under this subdivision or to retain any proceeds from the sale of such property shall be

subject to the institution meeting the conditions prescribed in subsection A of § 23.1-1002 and § 23.1-1019 (regardless of whether or not the institution has been granted any authority under Article 4 (§ 23.1-1004 et seq.) of Chapter 10 of Title 23.1).

1968, c. 717, § 2.1-106.2; 1972, c. 763; 1977, c. 672, § 2.1-505; 1978, c. 545; 1984, c. 641; 1995, c. 774; 2001, c. 844; 2004, c. 997; 2005, cc. 933, 945; 2009, c. 612; 2011, cc. 659, 675.

§ 2.2-1154. State agencies, institutions, to inquire of Department before acquiring land for capital improvements

A. Any state department, agency or institution shall, before purchasing or otherwise acquiring land for any capital improvement, inquire of the Department whether there is available any suitable land under the control of the Department or any other state department, agency or institution that may be authorized for the purpose for which the additional land is needed.

B. The Department shall require every state department, agency or institution responsible for the construction, operation or maintenance of public facilities within the Commonwealth, when siting state facilities and programs, to evaluate the feasibility of siting such facilities and programs in the Commonwealth's urban centers. In making such evaluation, the agency shall consider (i) the fiscal advantages of utilizing the existing infrastructure available in urban centers as compared to the construction of new infrastructure in less developed areas, (ii) the potential savings associated with leasing facilities from the private sector in urban centers as compared to purchasing or constructing new facilities in other areas, (iii) the convenience to employees and citizen users of state facilities and programs of placing such facilities and programs in close proximity to the road and transportation systems and other amenities found in the Commonwealth's urban centers, and (iv) whether the local governing body is supportive of the location as a desirable use of available land resources.

This subsection shall not be construed to limit the ability of a state department, agency or institution to locate facilities based on other factors such as a rural locality's desire to stimulate economic development or the need to have regionally dispersed services.

C. The provisions of subsection B shall not apply to any facility or program to be located on the campus of any public institution of higher education in Virginia.

1968, c. 717, § 2.1-106.4; 1977, c. 672, § 2.1-508; 2000, c. 704; 2001, c. 844; 2009, c. 612.

§ 2.2-1155. Temporary transfer of use of property between state agencies and institutions; lease to private entities

A. Whenever any department, agency, or institution of state government possesses or has under its control property for which there is an anticipated future use, but for which there is no immediate use, the department, agency, or institution of the Commonwealth may effect, subject to the written recommendation of the Department to the Governor and the written approval by the Governor, an agreement in writing with any other department, agency, or institution of state government for the use of the property by the other department, agency, or institution during a

period not to exceed fifteen years. The agreement may be extended beyond the fifteen-year period on an annual basis in accordance with the procedures prescribed in this subsection. In the event no other department, agency, or institution of state government has use for the property, the department, agency, or institution may lease the property to private individuals, firms, corporations or other entities in accordance with the procedures and subject to the term limitations prescribed in this subsection.

B. The provisions of subsection A notwithstanding, public institutions of higher education in Virginia, subject to the approval of the General Assembly, may enter into written agreements with university-related foundations, private individuals, firms, corporations, or other entities to lease property in the possession or control of the institution. Any such agreement and proposed development or use of property shall (i) be for a purpose consistent with the educational and general mission, auxiliary enterprises, and sponsored program activities of the institution, or such other purpose as the General Assembly may authorize, and (ii) comply with guidelines adopted by the Department. The term of any agreement shall be based upon, among other things, the useful life of the improvements to the property and shall not exceed fifty years; however, any agreement may be extended upon the written recommendation of the Governor and the approval of the General Assembly. Agreements with private individuals, firms, corporations, or other entities shall also be subject to guidelines adopted by the Secretary of Finance. In the event that any public institution of higher education in Virginia enters into any written agreement with a university-related foundation, private individual, firm, corporation, or other entity to lease property in the possession or control of the institution pursuant to this subsection, neither the real property that is the subject of the lease nor any improvements or personal property located on the real property that is the subject of the lease shall be subject to taxation by any local government authority pursuant to § 58.1-3203 or § 58.1-3502 or any other applicable law during the term of the lease, regardless of the ownership of the property, improvements or personal property, provided the real property, improvements or personal property shall be used for a purpose consistent with the educational and general mission, auxiliary enterprises, and sponsored program activities of the institution.

For the purposes of this section, "university-related foundation" means any foundation affiliated with an institution of higher education.

1971, Ex. Sess., c. 239, § 2.1-106.6:1; 1977, c. 672, § 2.1-511; 1981, c. 112; 1984, c. 641; 1988, c. 57; 1990, cc. 53, 688; 1992, c. 331; 2001, c. 844.

§ 2.2-1156. Sale or lease of surplus property and excess building space

The Department shall identify real property assets that are surplus to the current and reasonably anticipated future needs of the Commonwealth and may dispose of surplus assets as provided in this section, except when a department, agency or institution notifies the Department of a need for property which has been declared surplus, and the Department finds that stated need to be valid and best satisfied by the use of the property.

A. After it determines the property to be surplus to the needs of the Commonwealth and that such property should be sold, the Department shall request the written opinion of the Secretary of Natural Resources as to whether the property is a significant component of the Commonwealth's natural or historic resources, and if so how those resources should be protected in the sale of the property. The Secretary of Natural Resources shall provide this review within 15 business days of receipt of full information from the Department. Within 120 days of receipt of the Secretary's review, the Department shall, with the prior written approval of the Governor, proceed to sell the property.

B. The sale shall be by public auction, or sealed bids, or by marketing through one or more real estate brokers licensed by the Commonwealth. Notice of the date, time and place of sale, if by public auction or sealed bids shall be given by advertisement in at least two newspapers published and having general circulation in the Commonwealth, at least one of which shall have general circulation in the county or city in which the property to be sold is located. At least thirty days shall elapse between publication of the notice and the auction or the date on which sealed bids will be opened.

C. In instances where the appraised value of property proposed to be sold is determined to be a nominal amount or an amount insufficient to warrant statewide advertisement, but in no event in excess of $250,000, the notice of sale may be placed in only one newspaper having general circulation in the county or city in which the property to be sold is located.

D. The Department may reject any and all bids or offers when, in the opinion of the Department, the price is inadequate in relation to the value of the property, the proposed terms are unacceptable, or if a need has been found for the property.

E. In lieu of the sale of any such property, or in the event the Department determines there is space within a building owned by the Commonwealth or any space leased by the Commonwealth in excess of current and reasonably anticipated needs, the Department may, with the approval of the Governor, lease or sublease such property or space to any responsible person, firm or corporation on such terms as shall be approved by the Governor; provided, however the authority herein to sublease space leased by the Commonwealth shall be subject to the terms of the original lease. The Department shall post reports from the Commonwealth's statewide electronic procurement system, known as eVA, on the Department's website. The report shall include, at a minimum, current leasing opportunities and sales of surplus real property posted on the eVA's Virginia Business Opportunities website. Such reports shall also be made available by electronic subscription. The provisions of this section requiring disposition of property through the medium of sealed bids, public auction, or marketing through licensed real estate brokers shall not apply to any lease thereof, although such procedures may be followed in the discretion of the Department.

F. The deed, lease, or sublease conveying the property or excess space shall be executed in the name of the Commonwealth and shall be in a form approved by the Attorney General.

Notwithstanding any law to the contrary and notwithstanding how title to the property was acquired, the deed or lease may be executed on behalf of the Commonwealth by the Director of the Department or his designee, and such action shall not create a cloud on the title to the property. The terms of the sale, lease, or sublease shall be subject to the written approval of the Governor.

G. An exception to sale by sealed bids, public auction, or listing the property with a licensed real estate broker may be granted by the Governor if the property is landlocked and inaccessible from a public road or highway. In such cases, the Department shall notify all adjacent landowners of the Commonwealth's desire to dispose of the property. After the notice has been given, the Department may begin negotiations for the sale of the property with each interested adjacent landowner. The Department, with the approval of the Governor, may accept any offer which it deems to be fair and adequate consideration for the property. In all cases, the offer shall be the best offer made by any adjacent landowner. The terms of all negotiations shall be public information.

H. Subject to any law to the contrary, 50 percent of the proceeds from all sales or leases, or from the conveyance of any interest in property under the provisions of this article, above the costs of the transaction, which costs shall include fees or commissions, if any, negotiated with and paid to auctioneers or real estate brokers, shall be paid into the State Park Acquisition and Development Fund, so long as the sales or leases pertain to general fund agencies or the property involved was originally acquired through the general fund, except as provided in Chapter 180 of the Acts of Assembly of 1966. The remaining 50 percent of proceeds involving general fund sales or leases, less a pro rata share of any costs of the transactions, shall be deposited in the general fund of the state treasury. The Department of Planning and Budget shall develop guidelines which allow, with the approval of the Governor, any portion of the deposit in the general fund to be credited to the agency, department or institution having control of the property at the time it was determined surplus to the Commonwealth's needs. Any amounts so credited to an agency, department or institution may be used, upon appropriation, to supplement maintenance reserve funds or capital project appropriations, or for the acquisition, construction or improvement of real property or facilities. Net proceeds from sales or leases of special fund agency properties or property acquired through a gift for a specific purpose shall be retained by the agency or used in accordance with the original terms of the gift. Notwithstanding the foregoing, income from leases or subleases above the cost of the transaction shall first be applied to rent under the original lease and to the cost of maintenance and operation of the property. The remaining funds shall be distributed as provided herein.

I. When the Department deems it to be in the best interests of the Commonwealth, it may, with the approval of the Governor, authorize the department, institution or agency in possession or control of the property to dispose of surplus property in accordance with the procedures set forth in this section.

1968, c. 717, § 2.1-106.7; 1970, c. 202; 1972, c. 763; 1977, c. 672, § 2.1-512; 1978, c. 545; 1981, c. 104; 1984, c. 641; 1989, c. 687; 1991, c. 679; 1995, c. 399; 1998, c. 466; 2001, c. 844; 2002, c. 281; 2004, c. 997; 2009, c. 612; 2011, cc. 659, 675; 2016, c. 291.

§ 2.2-1157. Exploration for and extraction of minerals on state-owned uplands

A. The Department of Mines, Minerals and Energy, in cooperation with the Division, shall develop, with the assistance of affected state agencies, departments, and institutions, a State Minerals Management Plan (the "Plan"). The Plan shall include provisions for the holding of public hearings and the public advertising for competitive bids or proposals for mineral exploration, leasing, and extraction activities on state-owned uplands. Sales of mineral exploration permits and leases for these lands shall be administered by the Division, with the advice of the Department of Mines, Minerals and Energy.

B. Upon receiving the recommendation of both the Director of the Department of General Services and the Director of the Department of Mines, Minerals and Energy, the Governor shall determine whether the proposed mineral exploration, leasing, or extraction of minerals on state-owned uplands is in the public interest. No state-owned uplands shall be approved for mineral exploration, leasing, or extraction without a public hearing in the locality where the affected land or the greater portion thereof is located and a competitive bid or proposal process as described in the Plan. The provisions of this section shall not apply to the extraction of minerals on state-owned uplands pursuant to an oil or gas pooling order unless the well through which the extraction will occur is situated on such land.

For purposes of this section, "state-owned uplands" means lands owned by the Commonwealth that (i) lie landward of the mean low water mark in tidal areas or (ii) have an elevation above the average surface water level in nontidal areas.

C. The agencies, departments, or institutions proposing or receiving applications for mineral exploration, leasing or extraction on state-owned uplands shall, through their boards or commissions, recommend as specified in subsection D of § 2.2-1156 all such activities to the Division following guidelines set forth in the Plan. The Division and the Department of Mines, Minerals and Energy shall review and recommend to the Governor such proposed activities. Such agencies, departments or institutions, through their boards or commissions, may execute the leases or contracts that have been approved by the Governor.

D. The proceeds from all such sales or leases above the costs of the sale to the Department of Mines, Minerals and Energy or to the agency, department or institution sponsoring the sale shall be paid into the general fund of the state treasury, so long as the sales or leases pertain to general fund agencies or the property involved was originally acquired through the general fund. Net proceeds from sales or leases of special-fund agency properties or property acquired through a gift shall be retained by such agency or institution or used in accordance with the original terms of the gift if so stated.

E. Mining, leasing, and extraction activities in state-owned submerged lands shall be authorized and administered by the Virginia Marine Resources Commission pursuant to § 28.2-100 et seq.

1982, c. 238, § 2.1-512.1; 1984, c. 750; 1986, c. 488; 2001, c. 844; 2009, c. 612.

§ 2.2-1158. Management, harvesting and sale of timber on lands under control of Division

The Division may manage and harvest timber on lands placed under its control in accordance with the best timber management practices, after receiving the advice of the State Forester. The Division may also sell the timber, but before the sale is made, the State Forester or his deputy shall furnish the Division with an estimate of the value of the timber. In the event of sale, the proceeds shall first be used to defray the cost of the sale and the cost of maintenance of the property from which the timber is removed and the remainder, if any, of the funds shall be deposited in the Forest Management of State-owned Lands Fund created in § 10.1-1120.

1968, c. 717, § 2.1-106.8; 1977, c. 672, § 2.1-513; 1980, c. 525; 2001, c. 844.

§ 2.2-1159. Facilities for persons with physical disabilities in certain buildings; definitions; construction standards; waiver; temporary buildings

A. For the purposes of this section and § 2.2-1160 :

"Building" means any building or facility, used by the public, which is constructed in whole or in part or altered by the use of state, county or municipal funds, or the funds of any political subdivision of this Commonwealth. "Building" shall not include public school buildings and facilities, which shall be governed by standards established by the Board of Education pursuant to § 22.1-138.

"Persons with physical disabilities" means persons with:

1. Impairments that, regardless of cause or manifestation, for all practical purposes, confine individuals to wheelchairs;

2. Impairments that cause individuals to walk with difficulty or insecurity;

3. Total blindness or impairments affecting sight to the extent that the individual functioning in public areas is insecure or exposed to dangers;

4. Deafness or hearing handicaps that might make an individual insecure in public areas because he is unable to communicate or hear warning signals;

5. Faulty coordination or palsy from brain, spinal, or peripheral nerve injury; or

6. Those manifestations of the aging processes that significantly reduce mobility, flexibility, coordination and perceptiveness but are not accounted for in the aforementioned categories.

B. The Division shall prescribe standards for the design, construction, and alteration of buildings constructed in whole or in part or altered by the use of state funds, other than school funds, necessary to ensure that persons with physical disabilities will have ready access to, and use of, such buildings.

C. The governing body of a county, city or town or other political subdivision shall prescribe standards for the design, construction and alteration of buildings, not including public school facilities, constructed in whole or in part or altered by the use of the funds of such locality or political subdivision necessary to ensure that persons with physical disabilities will have ready access to, and use of, such buildings. The Division shall consult with the governing bodies upon request.

D. The Division, with respect to standards issued by it, and the governing body of any county, city or town or other political subdivision with respect to standards issued by it may:

1. Modify or waive any such standard, on a case-by-case basis, upon application made by the head of the department, agency or other instrumentality concerned, upon determining that a modification or waiver is clearly necessary; and

2. Conduct necessary surveys and investigations to ensure compliance with such standards.

E. The provisions of this section and § 2.2-1160 shall apply to temporary and emergency construction as well as permanent buildings.

1970, c. 539, §§ 2.1-109.01, 2.1-109.02, 2.1-109.03, 2.1-109.04, 2.1-109.06, 2.1-109.07; 1972, c. 223; 1977, c. 672, §§ 2.1-514, 2.1-515, 2.1-516, 2.1-517, 2.1-519, 2.1-520, 2.1-521; 1993, c. 226; 2001, c. 844.

§ 2.2-1160. Facilities for persons with physical disabilities; what buildings to be constructed in accordance with standards

Every building or facility designed, constructed or substantially altered after the effective date of a standard issued under subsection B of § 2.2-1159, which is applicable to such building shall be designed, constructed or altered in accordance with such standard.

1970, c. 539, § 2.1-109.05; 1977, c. 672, § 2.1-519; 2001, c. 844.

§ 2.2-1161. Buildings not in conformance with standards for persons with physical disabilities

The Division, upon a determination that a building or facility is not in conformance with the applicable standards for persons with physical disabilities, shall immediately take all necessary steps to ensure such building or facility is in conformance within three months of the date of its determination. The three-month period may be extended for an additional minimum period of time required to obtain funding and complete construction, where the Division determines an extension is necessary. This section shall apply only to those state buildings or facilities designed, constructed or substantially modified after July 1, 1977.

1977, c. 588, § 2.1-521.1; 1979, c. 243; 2001, c. 844.

§ 2.2-1161.1. Code Adam alerts in public buildings

Each state building that is open to the public shall have in place a Code Adam or similar program for the prevention of child abduction. Code Adam is a protocol used as a preventive tool against child abductions and for locating lost children in public buildings. The Department of General

Services shall develop model plans and ensure that each building covered by this section is prepared to activate Code Adam or a similar program under appropriate circumstances. All state agencies shall render assistance to the Department, upon request, in implementing this statute and the Department's plan within their buildings.

2003, cc. 83, 86.

Article 5 - ABATEMENT OF RISK OF ASBESTOS IN STATE-OWNED AND PUBLIC SCHOOL BUILDINGS

§ 2.2-1162. Definitions

As used in this article.

"Asbestos" means any material containing more than one percent of the asbestiform varieties of:

1. chrysotile (serpentine),

2. crocidolite (riebeckite),

3. amosite (cummingtonite-grunerite),

4. anthophyllite,

5. tremolite, or

6. actinolite.

"Director" means the Director of the Department of General Services.

"Friable" means material that is capable of being crumbled, pulverized or reduced to powder by hand pressure or which under normal use or maintenance emits or can be expected to emit asbestos fibers into the air.

"Local education agency" or "LEA" means the same as that term is defined in the United States Environmental Protection Agency Asbestos Hazard and Emergency Response Act regulations set forth in 40 CFR 763.

"Operations and maintenance program" means work practices to maintain asbestos-containing material in good condition and to minimize and control disturbance or damage to such materials.

"Response actions" means any action, including removal, encapsulation, enclosure, repair, method of operation, maintenance, record keeping or notification that protects human health from building materials containing asbestos.

"Secretary" means the Secretary of Administration.

1986, cc. 288, 560, § 2.1-526.12; 1988, c. 723; 1989, c. 398; 1990, c. 50; 2001, c. 844.

§ 2.2-1163. Inspection of state-owned buildings; marking locations where asbestos found; risk abatement and estimate of cost thereof

The Director at the direction of the Secretary and in cooperation with any other appropriate agencies including but not limited to the Department of Education shall ensure that every building owned by the Commonwealth or any agency of the Commonwealth which has not previously been inspected by competent personnel as provided below is inspected as soon as practical by competent personnel who have the training and equipment necessary to identify (i) the presence of asbestos, and (ii) to the extent practicable the relative hazard or hazards to health and safety posed at each location at which asbestos is identified. Every location at which asbestos is identified shall be clearly marked with suitably designed signs or labels. The Director shall prepare an accurate estimate of the cost of abating the risk of all asbestos so identified. The Director shall also establish a list of abatement priorities, which shall include the estimated cost of abating the risk at each location on the list. To the extent that funds are available, and in accordance with the priorities established by the Director, the agency or institution of the Commonwealth responsible for the maintenance of buildings at any such location shall proceed to abate the risk at such locations.

1985, c. 534, § 2.1-526.13; 1986, cc. 288, 560; 2001, c. 844.

§ 2.2-1164. Standards for inspection of buildings for asbestos

The Director, at the direction of the Secretary and in cooperation with any other appropriate agencies including, but not limited to, the Department of Education shall adopt standards for the inspection of state-owned and local education agency buildings of all types and the ancillary facilities used in connection therewith for the purpose of identifying the presence of asbestos and to the extent practicable the relative hazard to health or safety posed by any asbestos identified. The Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the adoption of standards under this section.

A. The standards shall include:

1. Inspection for the presence, location and condition of asbestos-containing materials;

2. Development of a building asbestos profile for each building inspected and found to contain asbestos-containing material, which profile shall:

(a) Include information regarding product type (surfacing material, thermal system insulation, or miscellaneous material), specific location, estimated quantity (in square or linear feet), type and percentage of asbestos content, and physical condition;

(b) Be kept in possession of the person designated pursuant to subsection E, at a location in the building where it is readily accessible to building employees or their designated representatives;

(c) Be updated as surveillance, test results and/or response actions are undertaken in the building.

B. The following standards are established for state-owned buildings:

1. When air monitoring is used for building assessment, it shall be used in conjunction with comprehensive visual assessment techniques for determining the priority and nature of response action.

2. The airborne asbestos reoccupancy level, to be measured upon completion of response actions, shall be equal to the reoccupancy standards established for buildings pursuant to subsection C.

C. The Director, in conjunction with the state Departments of Professional and Occupational Regulation, Health, Labor and Industry, Education, and Environmental Quality, shall adopt standards governing aggressive air sampling after completion of an asbestos project for airborne asbestos for local education agencies and public colleges and universities.

D. Asbestos management plans for state-owned buildings shall include:

1. Operation and maintenance programs, including procedures for the notification of maintenance and housekeeping personnel of the location of asbestos-containing materials likely to be disturbed during routine building operations; the labeling of asbestos-containing materials in routine maintenance areas; and work practices, engineering controls or personal protective measures to minimize asbestos exposure to such personnel and other building occupants;

2. Training requirements for maintenance workers and maintenance supervisory personnel;

3. Assurance of compliance by contractors with licensing under applicable state laws and regulations; and

4. Provisions for setting priorities of buildings for response actions.

E. Each person responsible for such management plans shall designate one member of the maintenance personnel in or responsible for each building containing asbestos-containing materials to serve as the liaison to coordinate the specific efforts of such program within the particular building to which the liaison is assigned.

1985, c. 534, § 2.1-526.14; 1986, cc. 288, 560; 1988, c. 723; 1993, c. 660; 2001, c. 844.

§ 2.2-1165. Inspection of public school buildings; certification of inspection; certain inspections made before July 1, 1986, deemed in compliance

A. Every public school division in the Commonwealth shall ensure that every school building owned or operated by it, which has not previously been inspected in compliance with this article, is inspected. Inspection shall conform to the standards developed pursuant to § 2.2-1164.

B. The superintendent of schools for each public school division shall certify to the Superintendent of Public Instruction and the Secretary that the public schools in the division have been inspected in compliance with this article.

C. Inspections completed prior to July 1, 1986, shall be deemed in compliance with this article if the Superintendent of Public Instruction and the Secretary determine that they conform sub-

stantially to the standards referenced in § 2.2-1164, or to the inspection procedures contained in 40 CFR 763.

1985, c. 534, § 2.1-526.15; 1986, cc. 288, 560; 2001, c. 844.

§ 2.2-1166. Marking locations where asbestos found in public school buildings; estimate of cost of risk abatement; list of priorities based on risk

Each public school division shall ensure that every location at which asbestos is identified following inspections conducted pursuant to subsection A or C of § 2.2-1165 is clearly marked with suitably designed signs or labels. Each division shall prepare an accurate estimate of the cost of abating the risk of asbestos at each location so identified. Each division shall also establish a list of priorities, based upon its determination of the risk to public health and safety posed by asbestos at each such location, which shall include the estimated cost of abating the risk at each location on the list.

1986, cc. 288, 560, § 2.1-526.16; 2001, c. 844.

§ 2.2-1167. Commonwealth immune from civil liability

The Commonwealth and its officers, agents and employees shall be immune from civil liability for actions (i) arising from the establishment and implementation of asbestos inspection standards developed pursuant to § 2.2-1164 and (ii) undertaken pursuant to the provisions of this article, Chapter 5 of Title 54.1, and §§ 32.1-126.1 and 63.2-1811.

1988, c. 723, § 2.1-526.17:1; 2001, c. 844.

Article 6 - DIVISION OF SUPPORT SERVICES

§ 2.2-1168. Division of Support Services may be established

The Director of the Department may establish a Division of Support Services (the "Division") and assign to this Division or to any other division any or all of the duties described in this article or otherwise imposed upon the Department.

1977, c. 672, § 2.1-527; 2001, c. 844.

§ 2.2-1169. Mail handling, messenger and parcel service

The Division shall operate a central service unit to provide all state departments, divisions, institutions and agencies in the Richmond area with mail handling, messenger and parcel service. These services may, if deemed appropriate, be extended to state departments, divisions, institutions and agencies in other areas of the Commonwealth.

1972, c. 503, § 2.1-243.1; 1976, c. 759; 1977, c. 672, § 2.1-528; 2001, c. 844.

§ 2.2-1170. Office equipment pool; repair

The Division may establish a general office equipment pool and central repair shop for such equipment, and may provide guidelines for the utilization of such equipment. For the purposes of this

section, computers, software, supplies, and related peripheral equipment shall not be considered general office equipment.

1977, c. 672, § 2.1-529; 2001, c. 844.

§ 2.2-1171. Printing and duplicating facilities

The Division may operate a printing and duplicating facility in the Richmond area, and may establish criteria for its use, subject to the provisions of § 2.2-1113.

1977, c. 672, § 2.1-530; 2001, c. 844.

§ 2.2-1172. Parking of vehicles in Capitol Square; parking facilities for state officers and employees; violations

A. Except as provided in this section, all parking in the Capitol Square of motor vehicles and animal-drawn vehicles is prohibited. However, during the recess of the General Assembly, the Division may cause to be marked off certain portions of the driveways in the Capitol Square and permit vehicles to be parked there under such regulations as may be prescribed. Parking areas on the west of the Capitol shall be reserved at all times for parking by members of the General Assembly.

B. During sessions of the General Assembly, parking in the Capitol Square shall be subject to rules and regulations adopted jointly by the Speaker of the House of Delegates and the chairman of the Senate Committee on Rules.

C. The Division may, with the approval of the Governor, utilize any property owned by the Commonwealth and located in the Richmond area for the purpose of providing parking facilities for officers and employees of the Commonwealth, and to allocate spaces therein. The Division may fix and collect fees for the use of the parking facilities. The Division may adopt regulations for the parking facilities, which regulations shall include the enforcement provisions required by §§ 46.2-1225 through 46.2-1229.

D. Any person parking any vehicle contrary to the rules and regulations referred to in subsection B or contrary to the other provisions of this section, or contrary to any parking sign or "No Parking" sign erected by the Division pursuant to regulations adopted by it, shall be subject to a fine of not less than one dollar nor more than twenty-five dollars for each offense.

Code 1950, § 2-75.1; 1958, c. 2; 1966, c. 677, § 2.1-94; 1970, c. 202; 1977, c. 672, § 2.1-531; 2001, c. 844.

Article 7 - CENTRALIZED FLEET MANAGEMENT

§ 2.2-1173. Definitions

As used in this article:

"Centralized fleet" means those passenger-type vehicles assigned to the Department of General Services and available for use by state agencies.

"Contract rental" means a contract for the use of motor vehicles by employees for official state business within the confines of their normal work locations. This does not include rental vehicles used by travelers after reaching their destination.

"Director" means the Director of the Department of General Services.

"Lease" means a contract for the use of a passenger-type vehicle for a term of more than thirty days.

"Passenger-type vehicle" means any automobile, including sedans and station wagons, or van used primarily for the transportation of the operator and no more than fifteen passengers.

1989, c. 479, § 33.1-400; 1998, c. 329; 2001, cc. 815, 842, § 2.1-548.01.

§ 2.2-1174. Vehicles assigned to the centralized fleet

Passenger-type vehicles purchased with public funds by any department, agency, institution, or commission of the Commonwealth, or any officer or employee on behalf of the Commonwealth, shall be assigned to the centralized fleet with the following exceptions:

1. Vehicles that have special equipment or performance requirements related to use by law-enforcement officers;

2. Vehicles for use by any elected official of the people of the Commonwealth; and

3. Such other special category of vehicles as may be excepted by the Director.

1989, c. 479, § 33.1-401; 2001, cc. 815, 842, § 2.1-548.02.

§ 2.2-1175. Responsibilities of Director

The Director shall establish an appropriate administrative unit within the Department to manage the centralized fleet. The Director's responsibilities for the centralized fleet shall include, but not be limited to, the following:

1. Administering the assignment of vehicles to officers and employees of the Commonwealth;

2. Managing a pool of vehicles for short-term use;

3. Purchasing vehicles necessary to the operation of the centralized fleet;

4. Repairing and maintaining vehicles;

5. Monitoring the use of vehicles and enforcing guidance documents regarding their proper use; and

6. Maintaining records related to the operation and maintenance of vehicles, and the administration of the centralized fleet.

1989, c. 479, § 33.1-402; 2001, cc. 815, 842, § 2.1-548.03; 2013, c. 485.

§ 2.2-1176. Approval of purchase, lease, or contract rental of motor vehicle

A. No motor vehicle shall be purchased, leased, or subject to a contract rental with public funds by the Commonwealth or by any officer or employee on behalf of the Commonwealth without the prior written approval of the Director. No lease or contract rental shall be approved by the Director except upon demonstration that the cost of such lease or contract rental plus operating costs of the vehicle shall be less than comparable costs for a vehicle owned by the Commonwealth.

Notwithstanding the provisions of this subsection, the Virginia Department of Transportation shall be exempted from the approval of purchase, lease, or contract rental of motor vehicles used directly in carrying out its maintenance, operations, and construction programs.

B. Notwithstanding other provisions of law, on or before January 1, 2012, the Director, in conjunction with the Secretary of Administration and the Secretary of Natural Resources, shall establish a plan providing for the replacement of state-owned or operated vehicles with vehicles that operate using natural gas, electricity, or other alternative fuels, to the greatest extent practicable, considering available infrastructure, the location and use of vehicles, capital and operating costs, and potential for fuel savings. The plan shall be submitted to the Governor for his review and approval. Once the plan is approved by the Governor, the Director shall implement the plan for the centralized fleet. All state agencies and institutions shall cooperate with the Director in developing and implementing the plan.

1989, c. 479, § 33.1-403; 1997, c. 48; 1998, c. 329; 2001, cc. 815, 842, § 2.1-548.04; 2011, c. 813.

§ 2.2-1176.1. Alternative Fuel Vehicle Conversion Fund established

There is hereby created in the state treasury a special nonreverting fund to be known as the Alternative Fuel Vehicle Conversion Fund, hereinafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of such moneys appropriated by the General Assembly and any other funds available from donations, grants, in-kind contributions, and other funds as may be received for the purposes stated herein. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes of assisting agencies of the Commonwealth with the incremental cost of state-owned alternative fuel vehicles and local government and agencies thereof and local school divisions with the incremental cost of such local government-owned alternative fuel vehicles. Moneys in the Fund may be used in conjunction with or as matching funds for any eligible federal grants for the same purpose. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director.

As used in this section, "incremental cost" means the entire cost of a certified conversion of an existing vehicle to use at least one alternative fuel or the additional cost of purchasing a new vehicle equipped to operate on at least one alternative fuel over the normal cost of a similar vehicle equipped to operate on a conventional fuel such as gasoline or diesel fuel.

The Director, in consultation with the Director of the Department of Mines, Minerals and Energy, shall establish guidelines for contributions and reimbursements from the Fund for the purchase or conversion of state-owned or local government-owned vehicles.

2012, cc. 199, 531; 2014, c. 199.

§ 2.2-1177. Transfer of surplus motor vehicles

The Director may transfer surplus motor vehicles among state agencies, and determine the value of such surplus equipment for the purpose of maintaining the financial accounts of the state agencies affected by such transfers.

1989, c. 479, § 33.1-404; 2001, cc. 815, 842, § 2.1-548.05.

§ 2.2-1178. Use of passenger-type vehicles on an assigned basis

A. Passenger-type vehicles assigned to the centralized fleet may be assigned to persons performing state duties only if deemed necessary by the head of the agency or institution requesting such vehicle and approved in writing by the Director. Request for such vehicle shall be made in writing on forms prepared by the Department of General Services by the head of the agency or institution explaining in detail the purpose of or reason for such assignment.

B. Assignments shall be approved by the Director only on the basis of one of the following criteria:

1. The vehicle shall be driven not less than the annual usage standard. The Director shall promulgate a minimum mileage standard taking into account best value, industry standard practices, and the use of alternative transportation methods;

2. The vehicle shall be used by an employee whose duties are routinely related to public safety or response to life-threatening situations:

a. A law-enforcement officer as defined in § 9.1-101, with general or limited police powers;

b. An employee whose job duties require the constant use or continuous availability of specialized equipment directly related to their routine functions; or

c. An employee on 24-hour call who must respond to emergencies on a regular or continuing basis, and emergency response is normally to a location other than the employee's official work station; or

3. The vehicle shall be used for essential travel related to the transportation of clients or wards of the Commonwealth on a routine basis, or for essential administrative functions of the agency for which it is demonstrated that use of a temporary assignment or personal mileage reimbursement is neither feasible nor economical.

C. No assignment shall be for a period exceeding two years except upon review by the Director as to the continued need for the assignment.

D. The use of such vehicle shall be limited to official state business.

1989, c. 479, § 33.1-405; 2001, cc. 815, 842, § 2.1-548.06; 2011, c. 611.

§ 2.2-1179. Use of vehicles for commuting

No passenger-type vehicle purchased or leased with public funds shall be used to commute between an employee's home and official work station without the prior written approval of the agency head and, in the case of vehicles assigned to the centralized fleet, the Director. The Director shall establish guidance documents governing such use of vehicles and shall ensure that costs associated with such use shall be recovered from employees. Employees who do not report to an official work station shall not be required to pay for travel between their homes and field sites. Guidance documents established by the Director and recovery of costs shall not apply to use of vehicles by law-enforcement officers. By executive order of the Governor, such guidance documents may extend to all motor vehicles of any type owned by the Commonwealth, or such of them as the Governor may designate.

1989, c. 479, § 33.1-406; 2001, cc. 815, 842, § 2.1-548.07; 2013, c. 485.

§ 2.2-1180. Guidance documents governing state-owned passenger-type vehicles

The Director may establish guidance documents for the purchase, use, storage, maintenance, repair, and disposal of all passenger-type vehicles owned by the Commonwealth and assigned to the centralized fleet. By executive order of the Governor, such guidance documents may extend to all motor vehicles of any type owned by the Commonwealth, or such of them as the Governor may designate.

If any state officer, agent, or employee fails to comply with any guidance documents of the Director made pursuant to the provisions of this section, the Secretary of Administration shall be so notified, and the Comptroller shall, upon request of the Secretary, refuse to issue any warrant or warrants on account of expenses incurred, or to be incurred in the purchase, operation, maintenance, or repair of any motor vehicle now or to be in the possession or under the control of such officer, agent, or employee, or the Secretary of Administration may order the Director to take possession of any such vehicle and to return or transfer it to the centralized fleet for assignment or use as prescribed by this chapter. Regulations previously promulgated by the Commonwealth Transportation Board under the authority granted by former § 33.1-407 concerning the purchase, use, storage, maintenance, repair, and disposal of all passenger-type vehicles owned by the Commonwealth and assigned to the centralized fleet shall remain in effect until the Director establishes replacement guidance documents under the authority granted by this article.

1989, c. 479, § 33.1-407; 1990, cc. 1, 317; 2001, cc. 815, 842, § 2.1-548.08; 2013, c. 485.

§ 2.2-1181. Fleet Management Internal Service Fund

There is hereby established a Fleet Management Internal Service Fund to be used exclusively to finance the operations of the centralized fleet.

1989, c. 479, § 33.1-408; 2001, cc. 815, 842, § 2.1-548.09.

Article 8 - HIGH PERFORMANCE BUILDINGS ACT

§ 2.2-1182. Short title; definitions

A. This article shall be known and may be cited as the High Performance Buildings Act.

B. As used in this article, unless the context requires a different meaning:

"High performance building certification program" means a public building design, construction, and renovation program that meets the requirements of VEES.

"VEES" means the Virginia Energy Conservation and Environmental Standards developed by the Department considering the U.S. Green Building Council (LEED) green building rating standard, the Green Building Initiative "Green Globes" building standard, and other appropriate requirements as determined by the Department.

2012, cc. 680, 793.

§ 2.2-1183. Building standards; exemption

A. Any executive branch agency or institution entering the design phase for the construction of a new building greater than 5,000 gross square feet in size or the renovation of a building where the cost of the renovation exceeds 50 percent of the value of the building, shall conform to VEES and the building shall be designed, constructed, verified, and operated to comply with the high performance building certification program.

B. The Director of the Department may grant an exemption from the design and construction standards required by subsection A upon a finding that special circumstances make the construction or renovation to the standards impracticable.

2012, cc. 680, 793.

Chapter 12 - DEPARTMENT OF HUMAN RESOURCE MANAGEMENT

§ 2.2-1200. Department of Human Resource Management created; Director

A. There is created a Department of Human Resource Management (the "Department"), which shall be headed by a Director appointed by the Governor to serve at his pleasure.

B. The Director of the Department shall, under the direction and control of the Governor, exercise such powers and perform such duties as are delegated to him by the Governor or conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

Code 1950, § 2-81; 1966, cc. 55, 677, § 2.1-113; 1975, c. 390; 1976, c. 761, § 2.1-114.3; 1978, c. 846; 1984, c. 720; 2000, cc. 66, 657; 2001, c. 844.

§ 2.2-1201. Duties of Department; Director

A. The Department shall have the following duties:

1. Make recommendations to the Governor regarding the establishment and maintenance of a classification plan for the service of the Commonwealth, and recommend necessary amendments thereto.

2. Make recommendations to the Governor regarding the establishment and administration of a compensation plan for all employees, and recommend necessary amendments thereto.

3. Design and maintain a personnel information system that shall support the operational needs of the Department and of state agencies, and that shall provide for the management information needs of the Governor, his secretaries, and the General Assembly. The system shall provide at a minimum a roster of all employees in the service of the Commonwealth, in which there shall be set forth as to each employee, the employing agency, the class title, pay, status and such other data as may be deemed desirable to produce significant facts pertaining to personnel administration.

4. Establish and direct a program of employee-management relations designed to improve communications between employees and agencies of the Commonwealth.

5. Establish and administer a system of performance evaluation for all employees in the service of the Commonwealth, based on the quality of service rendered, related where practicable to specific standards of performance. In no event shall workers' compensation leave affect the total number of hours credited during a performance cycle for purposes of calculating incentive increases in salary based on such performance evaluations.

6. Establish and administer a system of recruitment designed to attract high quality employees to the service of the Commonwealth. In administering this system, applicants shall be rated on the basis of relative merit and classified in accordance with their suitability for the various classes of positions in the service of the Commonwealth, and a record thereof shall be maintained in the open register.

7. Design and utilize an application form which shall include, but not be limited to, information on prior volunteer work performed by the applicant.

8. Establish and administer a comprehensive and integrated program of employee training and management development.

9. Establish and administer a program of evaluation of the effectiveness of performance of the personnel activities of the agencies of the Commonwealth.

10. Establish and administer a program to ensure equal employment opportunity to applicants for state employment and to state employees in all incidents of employment.

11. Establish and administer regulations relating to disciplinary actions; however, no disciplinary action shall include the suspension without pay for more than 10 days of any state employee who is under investigation without a hearing conducted either by a level of supervision above the employee's immediate supervisor or by his agency head.

12. Adopt and implement a centralized program to provide awards to employees who propose procedures or ideas that are adopted and that will result in eliminating or reducing state expenditures or improving operations, provided such proposals are placed in effect. The centralized program

shall be designed to (i) protect the identity of the individual making the proposal while it is being evaluated for implementation by a state agency, (ii) publicize the acceptance of proposals and financial awards to state employees, and (iii) include a reevaluation process that individuals making proposals may access if their proposals are rejected by the evaluating agency. The reevaluation process must include individuals from the private sector. State employees who make a suggestion or proposal under this section shall receive initial confirmation of receipt within 30 days. A determination of the feasibility of the suggestion or proposal shall occur within 60 days of initial receipt.

13. Develop state personnel policies and, after approval by the Governor, disseminate and interpret state personnel policies and procedures to all agencies. Such personnel policies shall permit an employee, with the written approval of his agency head, to substitute (i) up to 33 percent of his accrued paid sick leave, (ii) up to 100 percent of any other paid leave, or (iii) any combination of accrued paid sick leave and any other paid leave for leave taken pursuant to the Family and Medical Leave Act of 1993 (29 U.S.C. § 2601 et seq.). On and after December 1, 1999, such personnel policy shall include an acceptable use policy for the Internet. At a minimum, the Department's acceptable use policy shall contain provisions that (i) prohibit use by state employees of the Commonwealth's computer equipment and communications services for sending, receiving, viewing, or downloading illegal material via the Internet and (ii) establish strict disciplinary measures for violation of the acceptable use policy. An agency head may supplement the Department's acceptable use policy with such other terms, conditions, and requirements as he deems appropriate. The Director of the Department shall have the final authority to establish and interpret personnel policies and procedures and shall have the authority to ensure full compliance with such policies. However, unless specifically authorized by law, the Director of the Department shall have no authority with respect to the state grievance procedures.

13a. Develop state personnel policies, with the approval of the Governor, that permit any full-time state employee who is also a member of the organized reserve forces of any of the armed services of the United States or of the Virginia National Guard to carry forward from year to year the total of his accrued annual leave time without regard to the regulation or policy of his agency regarding the maximum number of hours allowed to be carried forward at the end of a calendar year. Any amount over the usual amount allowed to be carried forward shall be reserved for use only as leave taken pursuant to active military service as provided by § 2.2-2903.1. Such leave and its use shall be in addition to leave provided under § 44-93. Any leave carried forward for the purposes described remaining upon termination of employment with the Commonwealth or any department, institution or agency thereof that has not been used in accordance with § 2.2-2903.1 shall not be paid or credited in any way to the employee.

14. Ascertain and publish on an annual basis, by agency, the number of employees in the service of the Commonwealth, including permanent full-time and part-time employees, those employed on a temporary or contractual basis, and constitutional officers and their employees whose salaries are funded by the Commonwealth. The publication shall contain the net gain or loss to the

agency in personnel from the previous fiscal year and the net gains and losses in personnel for each agency for a three-year period.

15. Submit a report to the members of the General Assembly on or before September 30 of each year showing (i) the total number of full-time and part-time employees, (ii) contract temporary employees, (iii) hourly temporary employees, and (iv) the number of employees who voluntarily and involuntarily terminated their employment with each department, agency or institution in the previous fiscal year.

16. Administer the workers' compensation insurance plan for state employees in accordance with § 2.2-2821.

17. Work jointly with the Department of General Services and the Virginia Information Technologies Agency to develop expedited processes for the procurement of staff augmentation to supplement salaried and wage employees of state agencies. Such processes shall be consistent with the Virginia Public Procurement Act (§ 2.2-4300 et seq.). The Department may perform contract administration duties and responsibilities for any resulting statewide augmentation contracts.

B. The Director may convene such ad hoc working groups as the Director deems appropriate to address issues regarding the state workforce.

1976, c. 761, § 2.1-114.5; 1978, cc. 844, 845; 1979, c. 482; 1980, c. 198; 1988, c. 208; 1989, c. 254; 1992, c. 424; 1993, c. 561; 1994, cc. 17, 954; 1997, c. 856; 1999, c. 384; 2000, cc. 66, 633, 657, 697; 2001, c. 844; 2002, c. 780; 2003, cc. 685, 789; 2005, c. 386; 2006, c. 474; 2008, c. 576; 2012, cc. 803, 835.

§ 2.2-1201.1. Criminal background checks for certain positions

The Department shall develop a statewide personnel policy for designating positions within each state agency as sensitive. Such policy shall provide for a state agency to require any final candidate for a position that has been designated as sensitive to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history information regarding such applicant.

For purposes of this section, "sensitive positions" shall mean those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures.

2003, c. 731.

§ 2.2-1202. Employee compensation; annual review

It is a goal of the Commonwealth that its employees be compensated at a rate comparable to the rate of compensation for employees in the private sector of the Commonwealth in similar occupations. In determining comparability, consideration shall be given to the economic value of fringe benefits in addition to direct compensation. An annual review shall be conducted by the

Director of the Department to determine where discrepancies in compensation exist as between the public and private sectors of the Commonwealth. The results of the review shall be reported by December 15 of each year to the Governor and the General Assembly.

1976, c. 761, § 2.1-114.6; 2001, c. 844.

§ 2.2-1202.1. Additional powers and duties of Director; employment dispute resolution

The Director shall:

1. Establish a comprehensive program of employee relations management that includes alternative processes for resolving employment disputes;

2. Establish the grievance procedure and a statewide mediation program;

3. Adopt rules and set hearing officer fees for grievance hearings;

4. For employees who are covered by the grievance procedure, (i) provide forms necessary for the proper use of the grievance procedure; (ii) direct full compliance with the grievance procedure process; and (iii) investigate allegations of retaliation as the result of use of or participation in the grievance procedure or of reporting, in good faith, an allegation of fraud, waste, or abuse to the Fraud, Waste and Abuse Hotline and advise the agency head of the findings;

5. Render final decisions, containing the reasons for such decision, on all matters related to access to the grievance procedure, procedural compliance with the grievance procedure, and qualification for hearing;

6. Establish a process to select, on a rotating basis, hearing officers for grievance hearings from (i) the list maintained by the Executive Secretary of the Supreme Court or (ii) attorneys hired as classified employees by the Department through a competitive selection process; train and assign such hearing officers to conduct grievance hearings; evaluate the quality of their services to determine eligibility for continued selection; and, if deemed ineligible for continued selection, establish policies for removing such hearing officers from consideration for future selection;

7. Publish hearing officer decisions and Department rulings;

8. Establish a training program for human resources personnel on employee relations management and employment rights and responsibilities;

9. Implement a comprehensive training and instructional program for all supervisory personnel that includes the role of the grievance procedure in harmonious employee relations management. The training program shall also include methods for supervisors to instruct nonsupervisory personnel in the use of the grievance procedure. Use of the grievance procedure to resolve disputes shall be encouraged. In-house resources shall be developed to allow the Department and its personnel to conduct onsite training of this nature for units and agencies of state government throughout Virginia. The Department shall assist agencies in establishing performance criteria for such supervisory personnel;

10. Provide information upon the request of any employee concerning personnel policies, regulations, and law applicable to the grievance procedure and counsel employees in the resolution of conflict in the workplace;

11. Establish and maintain a toll-free telephone number to facilitate access by employees to the services of the Department;

12. Collect information and statistical data regarding the use of the grievance procedure and the effectiveness of employee relations management in the various state agencies;

13. Make recommendations to the Governor and the General Assembly to improve the grievance procedure and employee relations management;

14. Conduct such training seminars and educational programs for the members and staff of agencies and public bodies and other interested persons on the use of dispute resolution proceedings as the Director determines appropriate;

15. Exercise such other powers and perform such other duties as may be requested by the Governor; and

16. Perform all acts and employ such personnel as may be required, necessary, or convenient to carry out the provisions of this section.

1995, cc. 16, 646, 770, 818, § 2.1-116.03; 1996, cc. 164, 869; 1998, c. 263; 2000, cc. 66, 657, 947, 1006; 2001, c. 844, § 2.2-1001; 2012, cc. 56, 349, 803, 835; 2013, cc. 572, 690, 717, 723.

§ 2.2-1203. Certain information not to be made public

Notwithstanding the provisions of the Freedom of Information Act (§ 2.2-3700 et seq.), the Department shall not disclose lists of home addresses of state employees except in accordance with regulations adopted by the Department pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

1994, c. 892, § 2.1-114.5:01; 2001, c. 844.

§ 2.2-1204. Health insurance program for employees of local governments, local officers, teachers, etc.; definitions

A. The Department shall establish a plan or plans, hereinafter "plan" or "plans, " subject to the approval of the Governor, for providing health insurance coverage for employees of local governments, local officers, teachers, and retirees, and the dependents of such employees, officers, teachers, and retirees. The plan or plans shall be rated separately from the plan established pursuant to § 2.2-2818 to provide health and related insurance coverage for state employees. Participation in such insurance plan or plans shall be (i) voluntary, (ii) approved by the participant's respective governing body, or by the local school board in the case of teachers, and (iii) subject to regulations adopted by the Department. In addition, at the option of a governing body or school board that has elected to participate in the health insurance plan or plans offered by the Depart-

ment, the governing body or school board may elect to participate in the voluntary employee-pay-all long-term care program offered by the Commonwealth.

B. The plan or plans established by the Department, one of which may be similar to the state employee plan, shall satisfy the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.), shall consist of a flexible benefits structure that permits the creation of multiple plans of benefits, and may provide for single or separate rating groups based upon criteria established by the Department. The Department shall adopt regulations regarding the establishment of such a plan or plans, including, but not limited to, requirements for eligibility, participation, access and egress, mandatory employer contributions and financial reserves, adverse experience adjustments, and the administration of the plan or plans. The Department may engage the services of other professional advisors and vendors as necessary for the prudent administration of the plan or plans. The assets of the plan or plans, together with all appropriations, premiums, and other payments, shall be deposited in the employee health insurance fund, from which payments for claims, premiums, cost containment programs, and administrative expenses shall be withdrawn from time to time. The assets of the fund shall be held for the sole benefit of the employee health insurance fund. The fund shall be held in the state treasury. Any interest on unused balances in the fund shall revert back to the credit of the fund. The State Treasurer shall charge reasonable fees to recover the actual costs of investing the assets of the plan or plans.

In establishing the participation requirements, the Department may provide that those employees, officers, and teachers without access to employer-sponsored health care coverage may participate in the plan. It shall collect all premiums directly from the employers of such employees, officers, and teachers.

C. In the event that the financial reserves of the plan fall to an unacceptably low level as determined by the Department, it shall have the authority to secure from the State Treasurer a loan sufficient to raise the reserve level to one that is considered adequate. The State Treasurer may make such a loan, to be repaid on such terms and conditions as established by him.

D. For the purposes of this section:

"Employees of local governments" shall include all officers and employees of the governing body of any county, city, or town, and the directing or governing body of any political entity, subdivision, branch, or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges, or authority capable of exercise by the commission or public authority or body corporate, as distinguished from § 15.2-1300, 15.2-1303, or similar statutes, provided that the officers and employees of a social services department, welfare board, community services board or behavioral health authority, or library board of a county, city, or town shall be deemed to be employees of local government. For purposes of this section, private nonprofit organizations are not governmental agencies or instrumentalities.

"Local officer" means the treasurer, registrar, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, sheriff, or constable of any county or city or deputies or employees of any of the preceding local officers.

"Teacher" means any employee of a county, city, or other local public school board.

1989, c. 475, § 2.1-20.1:02; 1997, cc. 803, 888, 891; 2000, cc. 66, 620, 649, 657; 2001, cc. 520, 806, 844; 2008, c. 403; 2011, c. 489; 2012, cc. 476, 507, 803, 835; 2013, c. 687; 2016, c. 512.

§ 2.2-1205. Purchase of continued health insurance coverage by the surviving spouse and any dependents of an active or retired local law-enforcement officer, firefighter, etc., through the Department

A. The surviving spouse and any dependents of an active or retired law-enforcement officer of any county, city, or town of the Commonwealth; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; or a member of any fire company or department or emergency medical services agency that has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of the Commonwealth as an integral part of the official safety program of such county, city, or town; whose death occurs as the direct or proximate result of the performance of his duty, including the presumptions under §§ 27-40.1, 27-40.2, 51.1-813, and 65.2-402, shall be entitled, upon proper application to the Department, to purchase continued health insurance coverage on the following conditions: (i) on the date of death, the deceased participated in a health insurance plan administered by the Department pursuant to § 2.2-1204 and (ii) on the date of the deceased's death, the applicants were included in the health insurance plan in clause (i). The health insurance plan administered by the Department pursuant to § 2.2-1204 shall provide means whereby coverage for the spouse and any dependents of the deceased as provided in this section may be purchased. The spouse and any dependents of the deceased who purchase continued health insurance coverage pursuant to this section shall pay the same portion of the applicable premium as active employees pay for the same class of coverage, and the local government employer that employed the deceased shall pay the remaining portion of the premium.

B. Any application to purchase continued health insurance coverage hereunder shall be made in writing to the Department within 60 days of the date of the deceased's death. The time for making application may be extended by the Department for good cause shown.

C. In addition to any necessary information requested by the Department, the application shall state whether conditions set forth in clauses (i) and (ii) of subsection A have been met. If the Department states that such conditions have not been met, the Department shall conduct an informal fact-finding conference or consultation with the applicant pursuant to § 2.2-4019 of the Administrative Process Act. Upon scheduling the conference or consultation, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply thereafter.

D. Upon payment of any required premiums, coverage shall automatically be extended during the period for making application and shall be effective retroactive to the date of the deceased's death.

E. The terms, conditions, and costs of continued health insurance coverage purchased hereunder shall be subject to administration by the Department. The Department may increase the cost of coverage consistent with its administration of health insurance plans under § 2.2-1204. However, at no time shall a surviving spouse or dependents pay more for continued health insurance coverage than active employees pay under the same plan for the same class of coverage.

F. For the surviving spouse, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death, (ii) remarriage, (iii) alternate health insurance coverage being obtained, or (iv) any applicable condition outlined in the policies and procedures of the Department governing health insurance plans administered pursuant to § 2.2-1204.

G. For any surviving dependents, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death; (ii) marriage; (iii) alternate health insurance coverage being obtained; (iv) attaining the age of 21, unless the dependent is (a) a full-time college student, in which event coverage shall not terminate until such dependent has either attained the age of 25 or until such time as the dependent ceases to be a full-time college student, whichever occurs first, or (b) under a mental or physical disability, in which event coverage shall not terminate until three months following cessation of the disability; or (v) any applicable condition outlined in the policies and procedures of the Department governing health insurance plans administered pursuant to § 2.2-1204.

1997, c. 886, § 2.1-20.1:04; 1998, c. 699; 2000, cc. 66, 657; 2001, c. 844; 2015, cc. 502, 503.

§ 2.2-1206. Purchase of continued health insurance coverage by the surviving spouse and any dependents of an active local law-enforcement officer, firefighter, etc., through a plan sponsor

A. For the purposes of this section, "plan sponsor" means a local government employer that has established a plan of health insurance coverage for its employees, retirees and dependents of employees as are described in subsection B.

B. The surviving spouse and any dependents of an active law-enforcement officer of any county, city, or town of the Commonwealth; a jail officer; a regional jail or jail farm superintendent; a sheriff, deputy sheriff, or city sergeant or deputy city sergeant of the City of Richmond; or a member of any fire company or department or emergency medical services agency that has been recognized by an ordinance or a resolution of the governing body of any county, city, or town of the Commonwealth as an integral part of the official safety program of such county, city, or town whose death occurs as the direct or proximate result of the performance of his duty shall be entitled, upon proper application to the appropriate plan sponsor, to purchase continued health insurance coverage on the following conditions: (i) on the date of death, the deceased participated

in a health insurance plan administered by the plan sponsor and (ii) on the date of the deceased's death, the applicants were included in the health insurance plan in clause (i). The health insurance plan administered by the plan sponsor shall provide means whereby coverage for the spouse and any dependents of the deceased as provided in this section may be purchased.

C. Any application to purchase continued health insurance coverage hereunder shall be made in writing to the plan sponsor within 60 days of the date of the deceased's death. The time for making application may be extended by the plan sponsor for good cause shown.

D. In addition to any necessary information requested by the plan sponsor, the application shall state whether conditions set forth in clauses (i) and (ii) of subsection B have been met. If the plan sponsor states that such conditions have not been met, the plan sponsor, notwithstanding the provisions of § 2.2-4002, 2.2-4006, or 2.2-4011, shall conduct an informal fact-finding conference or consultation with the applicant pursuant to § 2.2-4019 of the Administrative Process Act. Upon scheduling the conference or consultation, the provisions of the local government's grievance procedure for nonprobationary, permanent employees shall apply thereafter.

E. Upon payment of any required premiums, coverage shall automatically be extended during the period for making application and shall be effective retroactive to the date of the deceased's death.

F. The terms, conditions, and costs of continued health insurance coverage purchased hereunder shall be subject to administration by the plan sponsor. The plan sponsor may increase the cost of coverage consistent with its administration of health insurance plans under § 2.2-1204. However, at no time shall the surviving spouse or dependents pay more for continued health insurance coverage than the active employee rate under the same plan for the same class of coverage.

G. For the surviving spouse, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death, (ii) remarriage, (iii) alternate health insurance coverage being obtained, or (iv) any applicable condition outlined in the policies and procedures of the plan sponsor governing health insurance plans administered for its active employees.

H. For any surviving dependents, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death; (ii) marriage; (iii) alternate health insurance coverage being obtained; (iv) attaining the age of 21, unless the dependent is (a) a full-time college student, in which event coverage shall not terminate until such dependent has either attained the age of 25 or until such time as the dependent ceases to be a full-time college student, whichever occurs first, or (b) under a mental or physical disability, in which event coverage shall not terminate until three months following cessation of the disability; or (v) any applicable condition outlined in the policies and procedures of the plan sponsor governing health insurance plans administered for its active employees.

1998, c. 698, § 2.1-20.1:05; 2001, c. 844; 2015, cc. 502, 503.

§ 2.2-1207. Long-term care insurance program for employees of local governments, local officers, and teachers

A. The Department shall establish a plan or plans, hereinafter "plan" or "plans," subject to the approval of the Governor, for providing long-term care insurance coverage for employees of local governments, local officers, and teachers. The plan or plans shall be rated separately from the plan developed pursuant to § 51.1-513.1 to provide long-term care insurance coverage for state employees. Participation in such insurance plan or plans shall be (i) voluntary, (ii) approved by the participant's respective governing body, or by the local school board in the case of teachers, and (iii) subject to regulations adopted by the Department.

B. The Department shall adopt regulations regarding the establishment of such a plan or plans, and the administration of the plan or plans.

C. For the purposes of this section:

"Employees of local governments" shall include all officers and employees of the governing body of any county, city or town, and the directing or governing body of any political entity, subdivision, branch or unit of the Commonwealth or of any commission or public authority or body corporate created by or under an act of the General Assembly specifying the power or powers, privileges or authority capable of exercise by the commission or public authority or body corporate, as distinguished from §§ 15.2-1300, 15.2-1303, or similar statutes, provided that the officers and employees of a social services department, welfare board, community services board or behavioral health authority, or library board of a county, city, or town shall be deemed to be employees of local government.

"Local officer" means the treasurer, registrar, commissioner of the revenue, attorney for the Commonwealth, clerk of a circuit court, sheriff, or constable of any county or city or deputies or employees of any of the preceding local officers.

"Teacher" means any employee of a county, city, or other local public school board.

D. The Department shall not carry out the provisions of this section if and when the Virginia Retirement System assumes responsibility for the plan or plans pursuant to § 51.1-513.3.

2002, c. 280; 2008, c. 568; 2012, cc. 476, 507.

§ 2.2-1208. Long-term care insurance

A. The Department of Human Resource Management shall develop, implement, and administer a long-term care insurance program for state employees and for any person who has five or more years of creditable service with any retirement plan administered by the Virginia Retirement System. The Department of Human Resource Management is authorized to contract for and purchase such coverage or use other actuarially sound funding necessary to effectuate this provision.

B. Any person eligible to participate in the long-term care insurance program established pursuant to § 2.2-1207 will not be eligible for this plan.

C. The Department shall adopt regulations regarding the establishment and the administration of the plan or plans.

D. The Department shall not carry out the provisions of this section if and when the Virginia Retirement System assumes responsibility for the long-term care coverage program pursuant to § 51.1-513.2.

2004, c. 312; 2008, c. 568.

Chapter 13 - DEPARTMENT OF INFORMATION TECHNOLOGY [Repealed]

§§ 2.2-1300 through 2.2-1304. Repealed

Repealed by Acts 2003, cc. 981 and 1021.

Chapter 14 - DEPARTMENT OF MINORITY BUSINESS ENTERPRISE [Repealed]

§§ 2.2-1400 through 2.2-1405. Repealed

Repealed by Acts 2013, c. 482, cl. 2, effective January 1, 2014.

Chapter 15 - DEPARTMENT OF PLANNING AND BUDGET

§ 2.2-1500. Department of Planning and Budget created; appointment of Director; powers and duties

A. There is created a Department of Planning and Budget (the "Department"), which shall be headed by a Director appointed by the Governor to serve at his pleasure.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

Code 1950, § 2-47; 1964, c. 302; 1966, cc. 55, 677, § 2.1-53; 1968, c. 223, § 2.1-63.1; 1972, c. 574; 1974, c. 23; 1975, c. 390; 1976, c. 760, §§ 2.1-388, 2.1-389; 1984, c. 720; 2001, c. 844.

§ 2.2-1501. Duties of Department

The Department shall have the following duties:

1. Development and direction of an integrated policy analysis, planning, and budgeting process within state government.

2. Review and approval of all sub-state district systems boundaries established or proposed for establishment by state agencies.

3. Formulation of an executive budget as required in this chapter. In implementing this provision, the Department shall utilize the resources and determine the manner of participation of any executive agency as the Governor may determine necessary to support an efficient and effective budget process notwithstanding any contrary provision of law. The budget shall include reports, or summaries thereof, provided by agencies of the Commonwealth pursuant to subsection E of § 2.2-603.

4. Conduct of policy analysis and program evaluation for the Governor.

5. Continuous review of the activities of state government focusing on budget requirements in the context of the goals and objectives determined by the Governor and the General Assembly and monitoring the progress of agencies in achieving goals and objectives.

6. Operation of a system of budgetary execution to ensure that agency activities are conducted within fund limitations provided in the appropriation act and in accordance with gubernatorial and legislative intent. The Department shall make an appropriate reduction in the appropriation and maximum employment level of any state agency or institution in the executive branch of government that reports involuntary separations from employment with the Commonwealth due to budget reductions, agency reorganizations, or workforce down-sizings, or voluntary separations from employment with the Commonwealth as provided in the second and third enactments of the act of the General Assembly creating the Workforce Transition Act of 1995 (§ 2.2-3200). In the event an agency reduces its workforce through privatization of certain functions, the funds associated with such functions shall remain with the agency to the extent of the savings resulting from the privatization of such functions.

7. Development and operation of a system of standardized reports of program and financial performance for management.

8. Coordination of statistical data by reviewing, analyzing, monitoring, and evaluating statistical data developed and used by state agencies and by receiving statistical data from outside sources, such as research institutes and the federal government.

9. Assessment of the impact of federal funds on state government by reviewing, analyzing, monitoring, and evaluating the federal budget, as well as solicitations, applications, and awards for federal financial aid programs on behalf of state agencies.

10. Review and verify the accuracy of agency estimates of receipts from donations, gifts or other nongeneral fund revenue.

11. (Effective until July 1, 2017) Development, coordination and implementation of a performance management system involving strategic planning, performance measurement, evaluation, and performance budgeting within state government. The Department shall ensure that information generated from these processes is useful for managing and improving the efficiency and effectiveness of state government operations, and is available to citizens and public officials.

11. (Effective July 1, 2017) Development, coordination and implementation of a performance management system involving strategic planning, performance measurement, evaluation, and performance budgeting within state government. The Department shall ensure that information generated from these processes is useful for managing and improving the efficiency and effectiveness of state government operations, and is available to citizens and public officials. The Department shall submit annually on or before the second Tuesday in January to the Chairman of the House Appropriations Committee and the Chairman of the Senate Finance Committee a report

that sets forth state agencies' strategic planning information and performance measurement results pursuant to this subdivision for the immediately preceding fiscal year.

12. Development, implementation and management of an Internet-based information technology system to ensure that citizens have access to performance information.

13. Development, implementation and management of an Internet-based information technology system to ensure that citizens have access to meeting minutes and information pertaining to the development of regulatory policies.

14. Development, coordination and management of a school efficiency review program.

1976, c. 760, § 2.1-391; 1979, cc. 672, 678; 1981, c. 315; 1984, c. 720; 1985, c. 114; 1989, c. 108; 1992, cc. 270, 381; 1995, cc. 152, 219, 811; 2000, c. 424; 2001, cc. 43, 844; 2002, cc. 580, 618; 2003, c. 900; 2005, c. 620.

§ 2.2-1501.1. Additional duties of Department; commercial activities list

A. As used in this section, unless the context requires a different meaning:

"Commercial activity" means performing services or providing goods that can normally be obtained from private enterprise.

"Commercial activities list" means the list of all commercial activities performed by employees of the Commonwealth.

"Privatization" means a variety of techniques and activities that promote more involvement of the private sector in providing services that have traditionally been provided by government. It also includes methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector.

B. From such funds as are appropriated for this purpose, the Department shall:

1. Examine and promote methods of providing a portion or all of select government-provided or government-produced programs and services through the private sector by a competitive contracting program, and advise the Governor, the General Assembly, and executive branch agencies of the Department's findings and recommendations.

2. Determine the privatization potential of a program or activity, perform cost/benefit analyses, and conduct public and private performance analyses. The Secretary of Finance shall independently certify the results of the comparison.

3. Devise, in consultation with the Secretary of Finance, evaluation criteria to be used in conducting performance reviews of any program or activity that is subject to a privatization recommendation.

C. The commercial activities list developed by the Department in accordance with this section shall be updated every two years and posted on the Internet. In addition, the Department shall solicit at least annually in the Virginia Register public comments on the commercial activities list

and invite recommendations from the public regarding activities being performed by state agencies that might better be performed by the private sector. All comments received shall be considered, and reasonable accommodation shall be made to permit representatives of any private entity, upon their request, to meet with the Department and the appropriate state agency to discuss their comments.

2012, cc. 803, 835.

§ 2.2-1502. Establishing regulations for preplanning of capital outlay projects

A. The Director of the Department or his designee shall adopt regulations requiring a preplanning justification or a preplanning study, or both, for all capital outlay projects undertaken by any department, agency or institution of the Commonwealth. A preplanning study shall be required for any project of construction, renovation, or other capital outlay involving a structure of 20,000 or more square feet or that is estimated to cost one million dollars or more. For projects of lesser size or cost, the regulations may require only a preplanning justification of the project. The Director or his designee may waive the requirement for a preplanning justification or preplanning study for such projects of lesser size and cost when, a preplanning justification or preplanning study is not needed or would not be warranted by the cost of making one. Preplanning studies for projects estimated to cost less than $2 million shall be done at a cost not exceeding $25,000. Preplanning studies for projects estimated to cost $2 million or more shall be done at a cost not exceeding $50,000. Exceptions to these limitations upon the cost of preplanning studies may be authorized by the House Committee on Appropriations and the Senate Committee on Finance.

B. The regulations shall (i) provide for the content and scope of preplanning justifications and preplanning studies, including the definition of the terms "capital outlay project"; (ii) require consideration of locally available fuels, including wood wastes, for use in new and replacement central heating plants in any proposed or existing public buildings or other facilities; and (iii) shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1983, c. 497, § 2.1-51.31; 1984, c. 720; 1993, c. 29; 2001, c. 844.

§ 2.2-1502.1. School efficiency review program

A. From such funds as may be appropriated or otherwise received for such purpose, and upon written request by a local school board or the division superintendent, the Director shall initiate a review of the relevant school division's central operations. Such review shall identify best practices followed by the division that may be shared with other divisions statewide, examine non-instructional expenditures, and identify opportunities to improve operational efficiencies and reduce costs for the division. The review shall include examinations of (i) divisional administration, (ii) human resources, (iii) educational service delivery costs, (iv) facilities use and management, (v) financial management, (vi) transportation, (vii) technology management, and (viii) food services. Such review shall not address the effectiveness of the educational services being delivered by the division and shall not constitute a division-level academic review as required by § 22.1-253.13:3.

B. All agencies, authorities, and institutions of the Commonwealth shall cooperate and provide assistance as the Director may request.

2005, c. 620; 2006, c. 596; 2016, cc. 53, 70.

§ 2.2-1503. Filing of six-year revenue plan by Governor

A. In every year, the Governor shall by December 15 prepare and submit to the members of the General Assembly an estimate of anticipated general fund revenue, an estimate of anticipated transportation fund revenues, and estimates of anticipated revenues for each of the remaining major nongeneral funds, for a prospective period of six years.

The Governor's estimates of anticipated general, transportation, and other nongeneral fund revenues shall be based on the following:

1. Forecasts of economic activity in the Commonwealth.

2. Review by an advisory board of economists with respect to economic assumptions and technical econometric methodology. The Joint Advisory Board of Economists (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government for such purpose. The Board shall be chaired by the Secretary of Finance, and consist of the Staff Director of the House Committee on Appropriations, the Staff Director of the Senate Committee on Finance, and 15 nonlegislative citizen members, 12 to be appointed by the Governor, at least eight being citizens of the Commonwealth, and three by the Joint Rules Committee, at least two being citizens of the Commonwealth. The 15 nonlegislative citizen members of the Board shall (i) be economists from either the public or private sector; (ii) serve at the pleasure of the appointing authority; (iii) be citizens of the United States with at least 10 being citizens of the Commonwealth; (iv) have their vacancies filled in the same manner as the original appointments; and (v) not receive compensation for their services, but shall be reimbursed for all reasonable and necessary expenses for the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses of the members shall be provided by the Department of Taxation. The Department of Taxation shall provide staff support. A majority of the members of the Board shall constitute a quorum. Meetings of the Board shall be held upon the call of the chairman or whenever a majority of the members so request.

3. Review by an advisory council of revenue estimates with respect to economic assumptions and the general economic climate of the Commonwealth. The Advisory Council on Revenue Estimates (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government for such purpose. The Council, of which the Governor shall be chairman, shall include the Speaker and Majority Leader of the House of Delegates; the President pro tempore and Majority Leader of the Senate; the Chairmen of the House Committee on Appropriations, the House Committee on Finance, and the Senate Committee on Finance or their designees; two members of the House of Delegates to be appointed by the Speaker of the House, two members of the Senate to be appointed by the Chairman of the Senate Committee on

Finance; and 15 to 20 nonlegislative citizen members representing the private sector appointed by the Governor. Legislative members appointed shall serve terms coincident with their terms of office and nonlegislative citizen members shall serve at the pleasure of the Governor. All members shall be citizens of the Commonwealth. Vacancies shall be filled in the same manner as the original appointments. Members shall not receive compensation for their services, but shall be reimbursed for all reasonable and necessary expenses for the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses of the members shall be provided by the Department of Taxation. The Department of Taxation shall provide staff support. A majority of the members of the Council shall constitute a quorum. Meetings of the Council shall be held upon the call of the chairman or whenever a majority of the members so request.

4. Any such other advisory bodies as the Governor may desire.

B. At the time the Governor submits the estimate of general fund revenues in accordance with subsection A, he shall also submit any alternative general fund revenue forecasts considered by the Advisory Council on Revenue Estimates.

1975, c. 501, § 2.1-63.02; 1976, c. 760, § 2.1-393; 1978, c. 802; 1981, c. 83; 1984, c. 473; 1985, c. 448; 2001, c. 844; 2003, c. 612; 2004, c. 1000; 2009, c. 537; 2010, c. 422; 2011, cc. 691, 714.

§ 2.2-1503.1. Filing of six-year financial outline by Governor

On or before the first day of each regular session of the General Assembly held in an even-numbered year, the Governor shall prepare and submit to the members of the General Assembly a financial plan for a prospective period of six years. The plan shall consist of (i) the Governor's biennial budget submitted pursuant to subsection A of § 2.2-1508, (ii) estimates of anticipated general fund and nongeneral fund revenue prepared for an additional period of four years pursuant to § 2.2-1503, and (iii) estimates of the general and nongeneral fund appropriations required for each major program for an additional period of four years. In preparing such financial plan, the Governor may utilize the estimate prepared by each agency pursuant to § 2.2-1504, or such other information as he may deem necessary.

2002, cc. 480, 486.

§ 2.2-1503.2. Repealed

Repealed by Acts 2008, Sp. Sess. I, cc. 1, 2, cl. 20, effective May 21, 2008.

§ 2.2-1503.3. Reestimate of general fund revenues

Within five business days after the preliminary close of the Commonwealth's accounts at the end of each fiscal year, the State Comptroller shall submit to the Governor a comparison of the total of individual income, corporate income, and sales taxes collected for the fiscal year, with the totals of such taxes included in the official budget estimate for the fiscal year. If the comparison indicates that the total collection of such taxes as shown in the preliminary close is 1.0 percent or more below the total amount of such taxes as included in the official budget estimate for the fiscal year, the Governor shall prepare a reestimate of general fund revenues for the current biennium and the

next biennium in accordance with the provisions of § 2.2-1503. The Governor's reestimate shall be reported to the chairman of the Senate Committee on Finance and the chairmen of the Finance and Appropriation Committees of the House of Delegates not later than September 1 following the close of the fiscal year.

2003, c. 14.

§ 2.2-1504. Estimates by state agencies of amounts needed

A. Biennially in the odd-numbered years, on a date established by the Governor, each of the several state agencies and other agencies and undertakings receiving or asking financial aid from the Commonwealth shall report to the Governor, through the responsible secretary designated by statute or executive order, in a format prescribed for such purpose, an estimate in itemized form in accordance with the expenditure classification adopted by the Governor, showing the amount needed for each year of the ensuing biennial period beginning with the first day of July. The Governor may prescribe targets that shall not be exceeded in the official estimate of each agency; however, an agency may submit to the Governor a request for an amount exceeding the target as an addendum to its official budget estimate.

B. Each agency or undertaking required to submit a biennial estimate pursuant to subsection A shall simultaneously submit an estimate of the amount that will be needed for the two succeeding biennial periods beginning July 1 of the third year following the year in which the estimate is submitted. The Department shall provide, within thirty days following receipt, copies of all agency estimates provided under this subsection to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

C. The format used in making these estimates shall (i) be prescribed by the Governor, shall (ii) be uniform for all agencies, and (iii) clearly designate the kind of information to be given. The Governor may prescribe a different format for estimates from institutions of higher education, which format shall be uniform for all such institutions and shall clearly designate the kind of information to be provided.

Code 1950, § 2-48; 1964, c. 125; 1966, c. 677, § 2.1-54; 1968, c. 683; 1975, c. 325; 1976, c. 760, § 2.1-394; 1979, c. 283; 1992, c. 582; 1993, c. 724; 1998, c. 467; 2001, c. 844.

§ 2.2-1505. Estimates by nonstate agencies of amounts needed

A. Except as provided in §§ 10.1-2211, 10.1-2212, and 10.1-2213, no state funds shall be appropriated or expended for, or to, nonstate agencies unless:

1. A request for state aid is filed by the organization with the Department of Planning and Budget, as required by § 2.2-1504.

2. The nonstate agency certifies to the satisfaction of the Department that matching funds are available in cash from local or private sources in an amount at least equal to the amount of the request. These matching funds shall be concurrent with the purpose for which state funds are

requested. Contributions received and spent prior to the state grant shall not be considered in satisfying the requirements of this subdivision.

3. The nonstate agency provides documentation of its tax exempt status under § 501 (c) (3) of the United States Internal Revenue Code.

B. (Effective until October 1, 2016) Except as provided in §§ 23-38.11 through 23-38.18, no state funds shall be appropriated to, or expended for, a private institution of higher education or religious organization.

B. (Effective October 1, 2016) Except as provided in §§ 23.1-628 through 23.1-635, no state funds shall be appropriated to, or expended for, a private institution of higher education or religious organization.

C. For the purposes of this section, a "nonstate agency" means any public or private foundation, authority, institute, museum, corporation or similar organization that is not a unit of state government or a political subdivision of the Commonwealth as established by general law or special act. It shall not include any such entity that receives state funds as a subgrantee of a state agency or through a state grant-in-aid program authorized by law.

1989, c. 711, § 2.1-394.1; 1998, c. 467; 2001, c. 844.

§ 2.2-1506. Estimates of financial needs of General Assembly and judiciary

On or before the first day of September biennially in the odd-numbered years the Committees on Rules of the House of Delegates and the Senate shall furnish the Governor an estimate of the financial needs of the General Assembly for each year of the ensuing biennial period beginning with the first day of July thereafter; and the Supreme Court of Virginia shall furnish to the Governor an estimate of the financial needs of the judiciary for each year of the ensuing biennial period beginning with the first day of July thereafter. The Committees on Rules of the House of Delegates and the Senate and the Supreme Court shall transmit to the Governor the estimates of all increases or decreases.

Code 1950, § 2-49; 1958, c. 370; 1966, c. 677, § 2.1-55; 1968, c. 683; 1974, c. 91; 1976, c. 760, § 2.1-395; 2001, c. 844.

§ 2.2-1507. Participation of certain agencies in budget development process of other agencies

Agencies having responsibilities granted under §§ 2.2-2007.1, 2.2-2696, and 51.5-135 shall participate in the budget development process of relevant agencies and receive from these agencies, prior to submission to the Department their proposed programs and budgets. Recommendations to the appropriate agencies and the secretaries of the Governor on related matters shall be made prior to budget submissions.

1979, c. 678, § 2.1-397.1; 1991, c. 563; 1998, c. 467; 2001, c. 844; 2012, cc. 803, 835; 2016, c. 296.

§ 2.2-1508. Submission of executive budget to General Assembly

A. On or before December 20 in the year immediately prior to the beginning of each regular session of the General Assembly held in an even-numbered year, the Governor shall submit to the presiding officer of each house of the General Assembly printed copies of a budget document, which shall be known as "The Executive Budget," based on his own conclusions and judgment, containing the following:

1. For each agency, the amount and number of positions appropriated for the current appropriation year and the amount and number of positions recommended for each year of the ensuing biennial period beginning with the first day of July thereafter, accompanied by an explanation of the recommended amount and number of positions. Such information shall also include the total estimated amount appropriated for personnel costs for each agency.

2. A statement of historical and projected trends that influence the general economic conditions in the Commonwealth and a statement of the economic assumptions upon which revenue projections are based.

3. A statement of the Governor's proposed goals, objectives, and policies in the areas of:

a. Administration of justice;

b. Education, including intellectual and cultural development;

c. Individual and family services;

d. Resources and economic development, including specific references to economic development and management of natural resources;

e. Transportation; and

f. General government, including therein or as separate categories areas of multiple impact, such as telecommunications, energy, and urban development.

4. A statement organized by function, primary agency, and proposed appropriation item that sets forth:

a. Identification of common programs and services;

b. Service attainments or lack of attainments and service terminations or reductions for the biennium;

c. Major goals, objectives, and specific outcomes related to expenditures for programs;

d. Program measures and performance standards to be used in monitoring and evaluating services; and the development of appropriate evaluation cycles, within available resources;

e. The amount of each primary agency's budget that is direct aid to localities.

5. A statement of proposed capital appropriations organized by the primary agency that sets forth the program need for the project and the proposed source of funding.

6. A listing of all activity, program-related, agency or departmental evaluations performed in the previous two years with guidance indicating the manner in which the public can gain access to the full text of such studies.

7. A schedule and description of all data processing or other projects in which the Commonwealth has entered into or plans to enter into a contract, agreement or other financing agreement or such other arrangement that requires that the Commonwealth either pay for the contract by foregoing revenue collections, or allows or assigns to another party the collection on behalf of or for the Commonwealth any fees, charges, or other assessment or revenues to pay for the project. Such schedule shall include by agency and project (i) a summary of the terms, (ii) the anticipated duration, and (iii) cost or charges to any user, whether a state agency or institutions or other party not directly a party to the project arrangements. The description shall also include any terms or conditions that bind the Commonwealth or restrict the Commonwealth operations and the methods of procurement employed to reach such terms.

B. On or before December 20 of the year immediately prior to the beginning of the regular session of the General Assembly held in odd-numbered years, the Governor shall submit to the presiding officer of each house of the General Assembly printed copies of a budget document, which shall be known as "Executive Amendments to the Appropriation Act," describing all gubernatorial amendments proposed to the general appropriation act enacted in the immediately preceding even-numbered session.

C. The Department of Planning and Budget shall prepare "The Executive Budget" and the "Executive Amendments to the Appropriation Act" in a manner and with language that can be easily understood by the citizens of the Commonwealth and that provides, to the extent practical, a cross-reference to the Governor's recommended budget bill or amendments to the Appropriation Act. Such documents shall also be placed on the Internet to provide easy access by the public.

Code 1950, § 2-54; 1954, c. 673; 1966, c. 677, § 2.1-60; 1968, c. 683; 1971, Ex. Sess., c. 57; 1975, c. 325; 1976, c. 760, § 2.1-398; 1977, c. 656; 1978, c. 570; 1979, cc. 319, 320; 1981, c. 114; 1992, c. 582; 2001, c. 844; 2003, cc. 190, 888; 2009, c. 536.

§ 2.2-1509. Budget bill

A. (Effective until July 1, 2017) On or before December 20 of the year immediately prior to the beginning of each regular session of the General Assembly held in an even-numbered year, the Governor also shall submit to the presiding officer of each house of the General Assembly, at the same time he submits "The Executive Budget," copies of a tentative bill for all proposed appropriations of the budget, for each year in the ensuing biennial appropriation period, which shall be known as "The Budget Bill." "The Budget Bill" shall be organized by function, primary agency, and proposed appropriation item and shall include (i) an identification of, and authorization for, common programs and (ii) the appropriation of funds according to programs. Strategic plan information and performance measurement results developed by each agency shall be made available to

the General Assembly as it considers "The Budget Bill." Except as expressly provided in an appropriation act, whenever the amounts in a schedule for a single appropriation item are shown in two or more lines, the portions of the total amount shown on separate lines are for information purposes only and are not limiting. No such bill shall contain any appropriation the expenditure of which is contingent upon the receipt of revenues in excess of funds unconditionally appropriated.

A. (Effective July 1, 2017) On or before December 20 of the year immediately prior to the beginning of each regular session of the General Assembly held in an even-numbered year, the Governor also shall submit to the presiding officer of each house of the General Assembly, at the same time he submits "The Executive Budget," copies of a tentative bill for all proposed appropriations of the budget, for each year in the ensuing biennial appropriation period, which shall be known as "The Budget Bill." "The Budget Bill" shall be organized by function, primary agency, and proposed appropriation item and shall include an identification of, and authorization for, common programs and the appropriation of funds according to programs. Except as expressly provided in an appropriation act, whenever the amounts in a schedule for a single appropriation item are shown in two or more lines, the portions of the total amount shown on separate lines are for information purposes only and are not limiting. No such bill shall contain any appropriation the expenditure of which is contingent upon the receipt of revenues in excess of funds unconditionally appropriated.

B. The salary proposed for payment for the position of each cabinet secretary and administrative head of each agency and institution of the executive branch of state government shall be specified in "The Budget Bill," showing the salary ranges and levels proposed for such positions.

C. "The Budget Bill" shall include all proposed capital appropriations, including each capital project to be financed through revenue bonds or other debt issuance, the amount of each project, and the identity of the entity that will issue the debt.

D. Concurrently with the submission of "The Budget Bill," the Governor shall submit a tentative bill involving a request for authorization of additional bonded indebtedness if its issuance is authorized by, or its repayment is proposed to be made in whole or in part, from revenues or appropriations contained in "The Budget Bill."

E. On or before December 20 of the year immediately prior to the beginning of each regular session held in an odd-numbered year of the General Assembly, the Governor shall submit to the presiding officer of each house printed copies of all gubernatorial amendments proposed to the general appropriation act adopted in the immediately preceding even-numbered year session. In preparing the amendments, the Governor may obtain estimates in the manner prescribed in §§ 2.2-1504, 2.2-1505, and 2.2-1506. On the same date he shall also submit a tentative bill during the second year of the appropriation period, a request for authorization of additional bonded indebtedness if its issuance is authorized by, or its repayment is proposed to be made in whole or in part, from revenues or appropriations contained in the proposed gubernatorial amendments.

F. The proposed capital appropriations or capital projects described in, or for which proposed appropriations are made pursuant to, this section shall include the capital outlay projects required to be included in "The Budget Bill" pursuant to § 2.2-1509.1. The Governor shall propose appropriations for such capital outlay projects in "The Budget Bill" in accordance with the minimum amount of funding and the designated sources of funding for such projects as required under § 2.2-1509.1.

Code 1950, § 2-55; 1952, c. 150; 1966, c. 677, § 2.1-61; 1975, c. 325; 1976, c. 760, § 2.1-399; 1979, c. 319; 1992, c. 582, § 2.1-399.1; 1994, c. 621; 1998, cc. 118, 467, 591; 2001, c. 844; 2002, cc. 839, 888; 2003, c. 900.

§ 2.2-1509.1. Budget bill to include appropriations for capital outlay projects

A. For purposes of this section:

"Projected general fund revenues" for a fiscal year means the estimated general fund revenues for such year as contained in the six-year revenue plan submitted in the prior calendar year pursuant to § 2.2-1503.

"Capital outlay project" means the same as that term is defined in § 2.2-1515.

B. In "The Budget Bill" submitted pursuant to § 2.2-1509, the Governor shall provide for the funding of capital outlay projects, as specified herein. Such funding recommendations shall be in addition to any appropriation for capital outlay projects from the Central Maintenance Reserve of the general appropriation act.

1. The Governor shall include in "The Budget Bill" submitted pursuant to § 2.2-1509 a biennial appropriation for the capital outlay plan described in § 2.2-1518. The biennial appropriation shall not be less than two percent of the projected general fund revenues for the biennium.

a. When the projected general fund revenues for a fiscal year or years are eight percent or greater than the projected general fund revenues for the immediately preceding fiscal year the amount of the biennial appropriation for the capital outlay plan that the Governor shall provide from general fund revenues shall not be less than two percent of the projected general fund revenues for each fiscal year.

b. When the projected general fund revenues for a fiscal year or years are at least five percent but less than eight percent greater than the projected general fund revenues for the immediately preceding fiscal year, the Governor may recommend funding of up to one-half of the required biennial appropriation from alternative financing mechanisms, including, but not limited to, bonded indebtedness. The Governor shall submit such bill or bills for consideration by the General Assembly as are necessary to implement such alternative financings, and shall include in "The Budget Bill" submitted pursuant to § 2.2-1509 proposed appropriations from general fund revenues for the remaining one-half of the required biennial appropriation.

c. When the projected general fund revenues for a fiscal year or years are less than five percent greater than the projected general fund revenues for the immediately preceding fiscal year, the Governor may recommend funding of up to the entire required biennial appropriation from alternative financing mechanisms, including, but not limited to, bonded indebtedness. The Governor shall submit such bill or bills for consideration by the General Assembly as are necessary to implement such alternative financings.

2. In implementing the provisions of this section, the amount of general funds to be included in the biennial appropriation for the capital outlay plan shall be calculated on a year-to-year basis, but may be apportioned on a biennial basis; provided, however, that the combined total of general fund appropriations and alternative financing mechanisms for the capital outlay plan included in "The Budget Bill" submitted pursuant to § 2.2-1509 shall equal at least two percent of the projected general fund revenues for the biennium.

C. The capital outlay projects proposed under this section and to be included in "The Budget Bill" submitted pursuant to § 2.2-1509 shall be consistent, as far as practicable, with those capital outlay projects included in the corresponding fiscal year of the current six-year capital outlay plan described in § 2.2-1518.

2002, cc. 839, 888; 2008, Sp. Sess. I, cc. 1, 2.

§ 2.2-1509.2. Budget Bill to include amounts diverted from Transportation Trust Fund and Highway Maintenance and Operating Fund

If any money in the Highway Maintenance and Operating Fund established pursuant to § 33.2-1530 or the Transportation Trust Fund established pursuant to § 33.2-1524 is proposed to be used for any purpose other than administering, planning, constructing, improving, and maintaining the roads embraced in the systems of highways for the Commonwealth and its localities and/or furthering the interests of the Commonwealth in the areas of public transportation, railways, seaports, and/or airports, then the Governor, if such diversion is proposed by the Governor, shall include with any such proposal a plan for repayment of funds diverted within three years of such use in "The Budget Bill" submitted pursuant to § 2.2-1509.

If such diversion of funds from the Highway Maintenance and Operating Fund or the Transportation Trust Fund is proposed by the General Assembly as an amendment to the Budget Bill, such amendment shall include language setting out the plan for repayment of such funds within three years.

2003, c. 970.

§ 2.2-1509.3. Budget bill to include appropriations for major information technology projects

A. For purposes of this section, unless the context requires a different meaning:

"Commonwealth Project Management Standard" means the same as that term is defined in § 2.2-2006.

"Major information technology project" means the same as that term is defined in § 2.2-2006.

"Major information technology project funding" means an estimate of each funding source for a major information technology project for the duration of the project.

B. In "The Budget Bill" submitted pursuant to § 2.2-1509, the Governor shall provide for the funding of major information technology projects, as specified herein. Such funding recommendations shall be for major information technology projects that have or are pending project initiation approval as defined in the Commonwealth Project Management Standard.

The Governor shall include in "The Budget Bill" submitted pursuant to § 2.2-1509 a biennial appropriation for major information technology projects and the following information for each such project:

1. For major information technology projects that have been recommended for funding, a brief statement explaining the business case for the project, the priority of the project in the Recommended Technology Investment Projects Report as required by § 2.2-2007, and an explanation, if necessary, if the Governor informed the Chief Information Officer (CIO) that an emergency existed as set forth in subdivision A 5 of § 2.2-2016.1;

2. Total estimated project costs, as defined by the Commonwealth Project Management Standard, including the amount of the agency's or institution's operating appropriation that will support the project;

3. All project costs incurred to date as defined by the Commonwealth Project Management Standard;

4. Recommendations or comments of the Public-Private Partnership Advisory Commission, if the project is part of a proposal under the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.);

5. The CIO's assessment of the project and the status as of the date of the budget bill submission to the General Assembly;

6. The planned project start and end dates as defined by the Commonwealth Project Management Standard; and

7. Projected annual operations and maintenance expenditures, including but not limited to fees, licenses, infrastructure, and agency and nonagency staff support costs, for information technology delivered by major information technology projects for the first budget biennium after project completion.

C. The CIO shall immediately notify each member of the Senate Finance Committee and the House Appropriations Committee of any decision to terminate in accordance with subsection B of § 2.2-2016.1 any major information technology project in the budget bill. Such communication shall include the CIO's reason for such termination.

2009, c. 757; 2010, cc. 136, 145; 2011, c. 739; 2015, c. 768; 2016, c. 296.

§ 2.2-1509.4. Budget bill to include an appropriation for land preservation

Each year the Governor shall include in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his amendments to the general appropriation act in effect submitted pursuant to subsection E of § 2.2-1509 a recommended appropriation from the general fund pursuant to subdivision D 4 c of § 58.1-512 to be allocated as follows: 80 percent of such amount to the Virginia Land Conservation Fund to be used in accordance with § 10.1-1020, with no less than 50 percent of such appropriation to be used for fee simple acquisitions with public access or acquisitions of easements with public access; 10 percent of such amount to the Virginia Battlefield Preservation Fund to be used in accordance with § 10.1-2202.4; and 10 percent of such amount to the Virginia Farmland Preservation Fund to be used in accordance with § 3.2-201.

2013, c. 798; 2015, c. 467.

§ 2.2-1510. Publication of budget highlights; public hearings

A. The Governor shall ensure that a summary of the highlights of each budget submitted pursuant to § 2.2-1508 and set of amendments submitted pursuant to subsection E of § 2.2-1509 are sent to a newspaper of general circulation in the following geographical areas of the Commonwealth: Northern Virginia, Hampton Roads, Richmond/Petersburg, Central Virginia, Shenandoah Valley, Roanoke Valley, Southside, and Southwest Virginia prior to the convening of each session of the General Assembly.

B. The House Committee on Appropriations and the Senate Committee on Finance shall hold at least four regional public hearings on the budget bill submitted by the Governor. The four public hearings shall be held prior to the convening of such session of the General Assembly, at hearing sites and times as selected by the chairmen of the two committees.

1998, c. 467, § 2.1-399.2; 2001, c. 844.

§ 2.2-1511. (Effective until July 1, 2017) Consideration of budget by committees

The standing committees of the House of Delegates and of the Senate in charge of appropriation measures shall begin consideration of the budget within five calendar days after the convening of the regular session of the General Assembly to which the budget is submitted. The committees or subcommittees thereof, may meet jointly on matters concerning the budget at such times as the chairmen of the two committees deem appropriate. The committees or subcommittees may cause the attendance of heads or responsible representatives of the departments, institutions and all other agencies of the Commonwealth to furnish such information and answer such questions as they require. The committees shall consider strategic plan information and performance-measurement results developed by each agency pursuant to Chapter 55.1 (§ 2.2-5510 et seq.) of this title and submitted by the Governor pursuant to § 2.2-1509. All persons interested in the matters under consideration shall be admitted to the meetings and shall have the right to be heard.

Code 1950, § 2-56; 1966, c. 677, § 2.1-62; 1976, c. 760, § 2.1-400; 1987, c. 138; 2001, c. 844; 2003, c. 900.

§ 2.2-1511. (Effective July 1, 2017) Consideration of budget by committees

The standing committees of the House of Delegates and of the Senate in charge of appropriation measures shall begin consideration of the budget within five calendar days after the convening of the regular session of the General Assembly to which the budget is submitted. The committees or subcommittees thereof, may meet jointly on matters concerning the budget at such times as the chairmen of the two committees deem appropriate. The committees or subcommittees may cause the attendance of heads or responsible representatives of the departments, institutions and all other agencies of the Commonwealth to furnish such information and answer such questions as they require. All persons interested in the matters under consideration shall be admitted to the meetings and shall have the right to be heard.

Code 1950, § 2-56; 1966, c. 677, § 2.1-62; 1976, c. 760, § 2.1-400; 1987, c. 138; 2001, c. 844.

§ 2.2-1512. Financial statements by Comptroller

On or before August 15 annually, the Comptroller shall furnish to the Department the following statements, classified and itemized in strict accordance with the budget classifications adopted by the Governor:

1. A statement showing the balance standing to the credit of the several appropriations for each department, bureau, division, office, board, commission, institution, or other agency or undertaking of the Commonwealth at the end of the last preceding appropriation year.

2. A statement showing the monthly expenditures from each appropriation account, and the total monthly expenditures from all the appropriation accounts, including special and all other appropriations, in the twelve months of the last preceding appropriation year.

3. A statement showing the annual revenues and expenditures in each fund.

4. An itemized and complete financial balance sheet for the Commonwealth at the close of the last preceding fiscal year ending June 30.

5. Such other statements as requested by the Governor.

Code 1950, § 2-50; 1966, c. 677, § 2.1-56; 1968, cc. 121, 683; 1976, c. 760, § 2.1-402; 1984, c. 612; 2001, c. 844.

§ 2.2-1513. Submission of additional information to legislative committees

A. To enable the House Committee on Appropriations, the House Committee on Finance, and the Senate Committee on Finance to perform their prescribed duties, the Governor shall provide:

1. Written monthly reports on the status of revenue collections relative to the current fiscal year's estimate; and

2. Written quarterly assessments of the current economic outlook for the Commonwealth relative to the current fiscal year.

B. In addition, all departments, agencies and institutions of the Commonwealth, their staff and employees shall, upon request, provide such committees with any additional information, as may be deemed necessary, and allow such committees ample opportunity to observe the department's, agency's, or institution's daily operations.

1975, c. 501, § 2.1-63.03; 1976, c. 760, § 2.1-404; 1997, c. 182; 2000, cc. 66, 657; 2001, c. 844; 2010, c. 422.

§ 2.2-1514. (Contingent expiration date -- see Editor's notes) Assignment of general fund for nonrecurring expenditures

A. As used in this section:

"The Budget Bill" means the "The Budget Bill" submitted pursuant to § 2.2-1509, including any amendments to a general appropriation act pursuant to such section.

"Nonrecurring expenditures" means the acquisition or construction of capital outlay projects as defined in § 2.2-1518, the acquisition or construction of capital improvements, the acquisition of land, the acquisition of equipment, or other expenditures of a one-time nature as specified in the general appropriation act.

B. (Effective until October 1, 2016) At the end of each fiscal year, the Comptroller shall assign within his annual report pursuant to § 2.2-813 as follows: 67 percent of the remaining amount of the general fund balance that is not otherwise restricted, committed, or assigned for other usage within the general fund shall be assigned by the Comptroller for deposit into the Transportation Trust Fund established pursuant to § 33.2-1524 or a subfund thereof, and the remaining amount shall be assigned for nonrecurring expenditures. No such assignment shall be made unless the full amounts required for other restrictions, commitments, or assignments including but not limited to (i) the Revenue Stabilization Fund deposit pursuant to § 2.2-1829, (ii) the Virginia Water Quality Improvement Fund deposit pursuant to § 10.1-2128, but excluding any deposits provided under the Virginia Natural Resources Commitment Fund established under § 10.1-2128.1, (iii) capital outlay reappropriations pursuant to the general appropriation act, (iv)(a) operating expense reappropriations pursuant to the general appropriation act, and (b) reappropriations of unexpended appropriations to certain public institutions of higher education pursuant to § 2.2-5005, (v) pro rata rebate payments to certain public institutions of higher education pursuant to § 2.2-5005, (vi) the unappropriated balance anticipated in the general appropriation act for the end of such fiscal year, and (vii) interest payments on deposits of certain public institutions of higher education pursuant to § 2.2-5005 are set aside. The Comptroller shall set aside amounts required for clauses (iv)(b), (v), and (vii) beginning with the initial fiscal year as determined under § 2.2-5005 and for all fiscal years thereafter.

B. (Effective October 1, 2016) At the end of each fiscal year, the Comptroller shall assign within his annual report pursuant to § 2.2-813 as follows: 67 percent of the remaining amount of the general fund balance that is not otherwise restricted, committed, or assigned for other usage within the general fund shall be assigned by the Comptroller for deposit into the Transportation Trust Fund established pursuant to § 33.2-1524 or a subfund thereof, and the remaining amount shall be assigned for nonrecurring expenditures. No such assignment shall be made unless the full amounts required for other restrictions, commitments, or assignments including but not limited to (i) the Revenue Stabilization Fund deposit pursuant to § 2.2-1829, (ii) the Virginia Water Quality Improvement Fund deposit pursuant to § 10.1-2128, but excluding any deposits provided under the Virginia Natural Resources Commitment Fund established under § 10.1-2128.1, (iii) capital outlay reappropriations pursuant to the general appropriation act, (iv)(a) operating expense reappropriations pursuant to the general appropriation act, and (b) reappropriations of unexpended appropriations to certain public institutions of higher education pursuant to § 23.1-1002, (v) pro rata rebate payments to certain public institutions of higher education pursuant to § 23.1-1002, (vi) the unappropriated balance anticipated in the general appropriation act for the end of such fiscal year, and (vii) interest payments on deposits of certain public institutions of higher education pursuant to § 23.1-1002 are set aside. The Comptroller shall set aside amounts required for clauses (iv)(b), (v), and (vii) beginning with the initial fiscal year as determined under § 23.1-1002 and for all fiscal years thereafter.

C. The Governor shall include in "The Budget Bill" pursuant to § 2.2-1509 recommended appropriations from the general fund or recommended amendments to general fund appropriations in the general appropriation act in effect at that time an amount for deposit into the Transportation Trust Fund or a subfund thereof, and an amount for nonrecurring expenditures equal to the amounts assigned by the Comptroller for such purposes pursuant to the provisions of subsection B. Such deposit to the Transportation Trust Fund or a subfund thereof shall not preclude the appropriation of additional amounts from the general fund for transportation purposes.

2002, cc. 839, 888; 2005, cc. 933, 945; 2007, c. 896; 2008, cc. 643, 701; 2008, Sp. Sess. I, cc. 1, 2; 2010, c. 684; 2012, cc. 729, 733.

§ 2.2-1514. (Contingent effective date -- see Editor's notes) Assignment of general fund for nonrecurring expenditures

A. As used in this section:

"The Budget Bill" means the "The Budget Bill" submitted pursuant to § 2.2-1509, including any amendments to a general appropriation act pursuant to such section.

"Nonrecurring expenditures" means the acquisition or construction of capital outlay projects as defined in § 2.2-1518, the acquisition or construction of capital improvements, the acquisition of land, the acquisition of equipment, or other expenditures of a one-time nature as specified in the general appropriation act.

B. (Effective until October 1, 2016) At the end of each fiscal year, the Comptroller shall assign within his annual report pursuant to § 2.2-813 as follows: 67 percent of the remaining amount of the general fund balance that is not otherwise restricted, committed, or assigned for other usage within the general fund shall be assigned by the Comptroller for deposit into the Transportation Trust Fund established pursuant to § 33.2-1524 or a subfund thereof, and the remaining amount shall be assigned for nonrecurring expenditures. No such assignment shall be made unless the full amounts required for other restrictions, commitments, or assignments including but not limited to (i) the Revenue Stabilization Fund deposit pursuant to § 2.2-1829, (ii) the Virginia Water Quality Improvement Fund deposit pursuant to § 10.1-2128, but excluding any deposits provided under the Virginia Natural Resources Commitment Fund established under § 10.1-2128.1, (iii) capital outlay reappropriations pursuant to the general appropriation act, (iv) (a) operating expense reappropriations pursuant to the general appropriation act, and (b) reappropriations of unexpended appropriations to certain public institutions of higher education pursuant to § 2.2-5005, (v) pro rata rebate payments to certain public institutions of higher education pursuant to § 2.2-5005, (vi) the unappropriated balance anticipated in the general appropriation act for the end of such fiscal year, and (vii) interest payments on deposits of certain public institutions of higher education pursuant to § 2.2-5005 are set aside. The Comptroller shall set aside amounts required for clauses (iv) (b), (v), and (vii) beginning with the initial fiscal year as determined under § 2.2-5005 and for all fiscal years thereafter.

B. (Effective October 1, 2016) At the end of each fiscal year, the Comptroller shall assign within his annual report pursuant to § 2.2-813 as follows: 67 percent of the remaining amount of the general fund balance that is not otherwise restricted, committed, or assigned for other usage within the general fund shall be assigned by the Comptroller for deposit into the Transportation Trust Fund established pursuant to § 33.2-1524 or a subfund thereof, and the remaining amount shall be assigned for nonrecurring expenditures. No such assignment shall be made unless the full amounts required for other restrictions, commitments, or assignments including but not limited to (i) the Revenue Stabilization Fund deposit pursuant to § 2.2-1829, (ii) the Virginia Water Quality Improvement Fund deposit pursuant to § 10.1-2128, but excluding any deposits provided under the Virginia Natural Resources Commitment Fund established under § 10.1-2128.1, (iii) capital outlay reappropriations pursuant to the general appropriation act, (iv) (a) operating expense reappropriations pursuant to the general appropriation act, and (b) reappropriations of unexpended appropriations to certain public institutions of higher education pursuant to § 23.1-1002, (v) pro rata rebate payments to certain public institutions of higher education pursuant to § 23.1-1002, (vi) the unappropriated balance anticipated in the general appropriation act for the end of such fiscal year, and (vii) interest payments on deposits of certain public institutions of higher education pursuant to § 23.1-1002 are set aside. The Comptroller shall set aside amounts required for clauses (iv) (b), (v), and (vii) beginning with the initial fiscal year as determined under § 23.1-1002 and for all fiscal years thereafter.

C. The Governor shall include in "The Budget Bill" pursuant to § 2.2-1509 recommended appropriations from the general fund or recommended amendments to general fund appropriations in the general appropriation act in effect at that time an amount for deposit into the Transportation Trust Fund or a subfund thereof, and an amount for nonrecurring expenditures equal to the amount assigned by the Comptroller for such purpose pursuant to the provisions of subsection B. Such deposit to the Transportation Trust Fund or a subfund thereof shall not preclude the appropriation of additional amounts from the general fund for transportation purposes.

2002, cc. 839, 888; 2005, cc. 933, 945; 2008, cc. 643, 701; 2008, Sp. Sess. I, cc. 1, 2; 2010, c. 684; 2012, cc. 729, 733.

Chapter 15.1 - SIX-YEAR CAPITAL OUTLAY PLAN

§ 2.2-1515. Definitions

As used in this chapter, unless the context clearly shows otherwise, the term or phrase:

"Advisory Committee" means the Six-Year Capital Outlay Plan Advisory Committee established pursuant to § 2.2-1516.

"Capital outlay project" means acquisition of real property, including buildings or plant or machinery or equipment, or new construction or improvements related to state-owned real property, buildings, plant, or machinery or equipment including plans therefor. It shall include any improvements to real property leased for use by a state agency or public educational institution and not owned by the Commonwealth, when such improvements are financed by public funds and become state property upon the expiration of the lease. Capital outlay projects do not include projects that have been included in the Commonwealth Transportation Board's Six-Year Improvement Program.

"Construction phase" means the following steps, as set out in the Construction and Professional Services Manual of the Department of General Services: preparation of final working drawings and specifications, advertising for a sealed bid or proposal, awarding a contract pursuant to law, and actual construction of a project.

"Detailed planning" means the preparation of architectural and engineering documents up to the preliminary design stage, as defined in the Construction and Professional Services Manual of the Department of General Services.

"Pre-planning" means a process meant to obtain a more detailed definition and cost estimate of a project. It may include the following elements, as appropriate:

1. Statement of program definition including functional space requirements, estimates of gross and net square footage, and functional adjacency requirements;

2. Analysis of program execution options, including review of new construction versus renovation alternatives, necessary phasing or sequencing of the project, and coordination with other ongoing or proposed capital projects;

3. Site analysis, including options considered and, for the site chosen, any specific issues related to topography, utilities, or environment;

4. Presentation, including site plan, conceptual floor plans and elevations, and conceptual exterior;

5. Identification of any Uniform Statewide Building Code compliance or permit requirements unique to the project; or

6. Cost estimate for the project to include total cost of the project, construction cost for the project, total cost per square foot, construction cost per square foot, costing methodology, and identification of any factors unique to the project that may impact overall project cost.

"Project" means a capital outlay project included in the six-year capital outlay plan described in § 2.2-1518.

"Value engineering" means a systematic process of review and analysis of a project by a team of appropriate professionals licensed in accordance with Chapter 4 (§ 54.1-400 et seq.) of Title 54.1. As a result of such review and analysis, the team may recommend changes to improve the project's quality or to reduce the total project cost without reducing the overall quality or function of the project.

2008, Sp. Sess. I, cc. 1, 2.

§ 2.2-1516. Six-Year Capital Outlay Plan Advisory Committee

A. There is hereby established the Six-Year Capital Outlay Plan Advisory Committee. The Advisory Committee shall consist of the following, or their designees: the Secretary of Finance, the Director of the Department of Planning and Budget, the Director of the Department of General Services, the Executive Director of the State Council of Higher Education for Virginia, and the staff directors of the House Appropriations Committee and the Senate Finance Committee.

B. 1. On or before November 1, 2008, the Advisory Committee shall submit to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees a proposed list of new capital outlay projects (and previously planned or authorized capital outlay projects) to be funded entirely or partially from general fund-supported resources for the six fiscal years beginning July 1, 2009.

2. The list shall include projects by agency, in priority order for each agency. In determining priorities, the Advisory Committee shall consider, but not be limited to, the following:

a. Projects that address safety, health, regulatory, security, environmental requirements, or accreditation;

b. Projects to upgrade or replace major mechanical systems and utility infrastructure;

c. Projects to renovate or maintain existing facilities;

d. Projects to construct, expand, or acquire facilities in order to meet programmatic needs;

e. For public institutions of higher education, projects that meet State Council of Higher Education for Virginia recommendations or guideline parameters;

f. Projects that improve energy efficiency;

g. Projects that are listed on, or eligible to be listed on, the Virginia Landmarks Register;

h. Renovation projects for which a facility condition assessment has been completed; and

i. Projects previously planned.

3. The list shall:

a. Identify each capital outlay project;

b. Describe the scope and nature of the project; and

c. Include any other information that the Advisory Committee deems useful.

C. Beginning in 2011, on or before November 1 of each year, the Advisory Committee shall make recommendations to the Governor and the Chairmen of the House Appropriations and the Senate Finance Committees of any changes to the current six-year capital outlay plan (described in § 2.2-1518) and of project funding, including adjusting the fiscal years covered by the plan so that the plan will cover the six fiscal years beginning July 1 of the following year.

2008, Sp. Sess. I, cc. 1, 2; 2011, cc. 697, 718.

§ 2.2-1517. Agency submission of information

A. In addition to all other reporting requirements imposed upon state agencies and public educational institutions provided under law, state agencies and public educational institutions shall submit information as determined by the Advisory Committee for the initial development of the capital outlay project list as described in § 2.2-1516, as well as for the annual modifications to the six-year capital outlay plan described in § 2.2-1518. The information for the annual modifications shall include, but not be limited to, changes in cost estimates.

B. On or before January 30 each year, the Director of the Department of General Services, on behalf of the Advisory Committee, shall advise state agencies and public educational institutions of the content, format, and method established by the Advisory Committee for submitting the information described in subsection A.

C. State agencies and public educational institutions shall submit the information, in the manner prescribed by the Director of the Department of General Services on behalf of the Advisory Committee pursuant to subsection B, to the Department of General Services and the Department of Planning and Budget on or before March 30 each year. In addition, public educational institutions shall submit the information to the State Council of Higher Education.

D. The Department of Planning and Budget, the Department of General Services, and the staff of the State Council of Higher Education shall review the information submitted and shall submit the information and the results of their review, in the manner prescribed by the Advisory Committee, to the Advisory Committee on or before June 30 each year.

E. On the same day that the Governor presents his preliminary report pursuant to § 2.2-813, the Advisory Committee shall meet at a time and place specified by the Secretary of Finance to consider the information provided pursuant to subsection D, as well as a capital outlay project status report, to be prepared by the Director of the Department of General Services, on all active projects that have received any funding, including completed planning estimates, project bids, and project timelines. The Advisory Committee shall submit its evaluations and recommendations regarding capital outlay projects to the Governor and the General Assembly on or before November 1 each year.

2008, Sp. Sess. I, cc. 1, 2; 2011, cc. 697, 718.

§ 2.2-1518. Governor to submit a tentative bill for a capital outlay plan; gubernatorial amendments proposed to the plan

A.1. No later than January 13, 2009, the Governor shall submit to the General Assembly a tentative bill establishing a capital outlay plan that includes new capital outlay projects (and previously planned or authorized capital outlay projects) that the Governor proposes to be funded entirely or partially from general fund-supported resources for the six fiscal years beginning July 1, 2009. Projects included in the capital outlay plan shall be in addition to any projects for which funds are appropriated from the Central Maintenance Reserve of the general appropriation act.

2. The capital outlay plan submitted by the Governor shall list capital outlay projects in different tiers. Each tier shall be a grouping of capital outlay projects with the total estimated cost of each project in the tier falling within a minimum and a maximum project cost assigned to the tier, provided that no estimated project costs shall be set out in the plan. The minimum and maximum range assigned to a tier shall be mutually exclusive of all other minimum and maximum ranges assigned to other tiers in order that no capital outlay project shall be reported in more than one tier.

For each capital outlay project listed in the plan the Governor shall provide the following information: (i) the agency or public educational institution to which the project is related, (ii) a description of the project, and (iii) a ranking number assigned to the project, which number shall signify the priority of the project when compared to all other projects of the agency or institution listed in the plan.

B. In 2011, and each year thereafter, the Governor shall, on or before December 20, submit to the General Assembly a tentative bill proposing amendments to the current capital outlay plan enacted into law, including adjusting the fiscal years covered by the plan so that the plan will

cover the six fiscal years beginning on the immediately following July 1. Any such tentative bill shall be submitted using the format described in subsection A.

C. In submitting to the General Assembly tentative bills for the initial capital outlay plan and for plan amendments, the Governor shall consider the capital outlay project list submitted by the Advisory Committee pursuant to § 2.2-1516 and any amendments to the six-year capital outlay plan recommended by the Advisory Committee pursuant to such section.

2008, Sp. Sess. I, cc. 1, 2; 2011, cc. 697, 718.

§ 2.2-1519. Implementation of certain capital outlay projects

A. 1. The Central Capital Planning Fund, the State Agency Capital Account, and the Public Educational Institution Capital Account established pursuant to § 2.2-1520 shall be used to fund capital outlay projects included in the six-year capital outlay plan enacted into law.

2. In addition, public educational institutions and state agencies may request authority and appropriation to conduct pre-planning for any such project using nongeneral fund sources. Such costs may be reimbursed up to the lesser of $250,000 or one percent of the project construction costs.

B. A Virginia-based contractor who does not have the same number of years of comparable experience under construction management or design-build shall not be penalized for having less comparable experience in construction management or design-build projects, provided such contractor does have significant experience in constructing comparable projects under design-bid-build. The procuring entity shall consider the experience and quality of work that a contractor has done on projects comparable to the project being procured, whether under construction management, design-build, or design-bid-build. These factors shall be considered by the procuring entity in making its decisions in a pre-qualification or a contractor selection process.

C. If at any time during the detailed planning phase the total cost of a capital outlay project is estimated to exceed a threshold amount set forth in the general appropriation act for the required use of value engineering, then value engineering shall be utilized for such project. Each agency and public educational institution shall retain documentation of the value engineering process conducted for any project, including documentation relating to (i) recommendations offered to the agency or institution, (ii) recommendations accepted and rejected by the agency or institution, and (iii) any savings to the agency or institution resulting from the adoption of each recommendation.

D. For capital outlay projects for which an appropriation is made to the State Agency Capital Account or the Public Educational Institution Capital Account, after an agency or public educational institution has received authorization to move to the construction phase of a project, the Director of the Department of Planning and Budget shall transfer sufficient appropriation from the State Agency Capital Account or the Public Educational Institution Capital Account, as appropriate.

E. 1. Prior to an agency or public educational institution awarding a construction contract for a project, the Director of the Department of General Services shall review the lowest bid or best proposal for the project. If the total amount of such bid or proposal, plus previously expended funds and a reasonable allowance for contingencies, does not exceed 105 percent of the general fund-supported resources for the project as determined during the detailed planning phase, the Director of the Department of General Services and the Director of the Department of Planning and Budget may approve the contract. If the total amount of such bid or proposal, plus previously expended funds and a reasonable allowance for contingencies, exceeds 105 percent of the general fund-supported resources for the project, the Directors shall not approve the contract unless funding of that portion of such total project cost in excess of 105 percent of the general fund-supported resources allocated to the project is from nongeneral fund sources such as private funds, gifts, grants, auxiliary funds, or federal funds as appropriate.

2. If an agency or public educational institution is unable to procure funding from nongeneral fund sources for that portion of such total project cost in excess of 105 percent of the general fund-supported resources allocated to the project, then the agency or institution may reduce the size or scope of the project as necessary to remain within 105 percent of the general fund-supported resources allocated to the project, provided that (i) it has completed a value engineering review by or in collaboration with the Department of General Services, (ii) it has provided a written, detailed analysis of the proposed reduction to the Governor and to the Chairmen of the House Appropriations and Senate Finance Committees, and (iii) the project after such reduction in size or scope is substantially similar in quality and functionality to the original project.

3. An agency or public educational institution may request a supplemental allocation of general fund-supported resources through the budget process only if it submits a written certification to the Chairmen of the House Appropriations and Senate Finance Committees, the Director of the Department of General Services, the Director of the Department of Planning and Budget, and, for public institutions of higher education only, the Executive Director of the State Council of Higher Education, which certification (i) states that additional funding from nongeneral fund sources as described in subdivision 1 will be insufficient to pay for the full amount of the project cost that is in excess of 105 percent of the general fund-supported resources allocated to the project and (ii) provides a detailed analysis and description of the project as modified for a reduction in size or scope as described in subdivision 2 as well as a justification for why such modifications in size or scope cannot be achieved.

4. Nothing in this section shall preclude an agency or public educational institution from providing for re-design or additional value engineering of projects or re-bidding or re-submitting of proposals.

5. No construction contract for a capital outlay project included in the six-year capital outlay plan enacted into law shall be awarded unless first approved by the Director of the Department of General Services and the Director of the Department of Planning and Budget.

F. After a project has been approved by the Director of the Department of General Services and the Director of the Department of Planning and Budget, the Director of the Department of Planning and Budget shall transfer to the project the remaining funds needed for construction from the State Agency Capital Account or the Public Educational Institution Capital Account, as appropriate.

2008, Sp. Sess. I, cc. 1, 2.

§ 2.2-1520. Certain funds established

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the Central Capital Planning Fund, hereafter referred to as the Fund. The Fund shall include such moneys as may be appropriated by the General Assembly from time to time and designated for the Fund. The Fund shall be established on the books of the Comptroller and shall be administered by the Director of the Department of Planning and Budget. Any moneys remaining in the Fund at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to pay the pre-planning or detailed planning costs of capital outlay projects that have been approved for pre-planning or detailed planning by the General Assembly.

B. The State Agency Capital Account shall be established in the general appropriation act as a separate item for appropriation purposes. The State Agency Capital Account shall consist of appropriations of the proceeds from the sale of certain bonds by the Virginia Public Building Authority that are designated for the Account and any other moneys as may be appropriated by the General Assembly. The Account shall be administered by the Director of the Department of Planning and Budget consistent with the provisions of this chapter. The Account shall be used to finance the construction of projects, as defined in § 2.2-2260, that have been approved for construction by the General Assembly. In addition, it is required that the Account reimburse the Central Capital Planning Fund for payments made for pre-planning or detailed planning of all such projects that have been approved for construction by the General Assembly.

C. (Effective until October 1, 2016) The Public Educational Institution Capital Account shall be established in the general appropriation act as a separate item for appropriation purposes. The Public Educational Institution Capital Account shall consist of appropriations of the proceeds from the sale of certain bonds by the Virginia College Building Authority that are designated for the Account and any other moneys as may be appropriated by the General Assembly. The Account shall be administered by the Director of the Department of Planning and Budget consistent with the provisions of this chapter. The Account shall be used to finance the construction of projects, as defined in § 23-15, that have been approved for construction by the General Assembly. In addition, it is required that the Account reimburse the Central Capital Planning Fund for payments made for pre-planning or detailed planning of all such projects that have been approved for construction by the General Assembly.

C. (Effective October 1, 2016) The Public Educational Institution Capital Account shall be established in the general appropriation act as a separate item for appropriation purposes. The Public Educational Institution Capital Account shall consist of appropriations of the proceeds from the sale of certain bonds by the Virginia College Building Authority that are designated for the Account and any other moneys as may be appropriated by the General Assembly. The Account shall be administered by the Director of the Department of Planning and Budget consistent with the provisions of this chapter. The Account shall be used to finance the construction of projects, as defined in § 23.1-1100, that have been approved for construction by the General Assembly. In addition, it is required that the Account reimburse the Central Capital Planning Fund for payments made for pre-planning or detailed planning of all such projects that have been approved for construction by the General Assembly.

2008, Sp. Sess. I, cc. 1, 2.

Chapter 16 - DEPARTMENT OF THE STATE INTERNAL AUDITOR

§§ 2.2-1600 through 2.2-1602. Repealed

Repealed by Acts 2011, cc. 798 and 871, cl. 2, effective July 1, 2012.

Chapter 16.1 - DEPARTMENT OF SMALL BUSINESS AND SUPPLIER DIVERSITY

Article 1 - GENERAL PROVISIONS

§ 2.2-1603. Department of Small Business and Supplier Diversity created; appointment of Director; offices; personnel

A. There is hereby created a Department of Small Business and Supplier Diversity (the Department), which shall be headed by a Director appointed by the Governor to serve at his pleasure. The Director shall also serve as a special assistant to the Governor for small, women-owned, and minority-owned business development.

B. The Director of the Department shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

C. The Department shall have its main office in Richmond and may have branch offices as may be necessary, as determined by the Director subject to the approval of the Secretary of Commerce and Trade.

2013, c. 482.

§ 2.2-1604. Definitions

As used in this chapter, unless the context requires a different meaning:

"Certification" means the process by which (i) a business is determined to be a small, women-owned, or minority-owned business or (ii) an employment services organization, for the purpose

of reporting small, women-owned, and minority-owned business and employment services organization participation in state contracts and purchases pursuant to §§ 2.2-1608 and 2.2-1610.

"Department" means the Department of Small Business and Supplier Diversity or any division of the Department to which the Director has delegated or assigned duties and responsibilities.

"Employment services organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Historically black colleges and university" includes any college or university that was established prior to 1964; whose principal mission was, and is, the education of black Americans; and that is accredited by a nationally recognized accrediting agency or association determined by the Secretary of Education.

"Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka, and who is regarded as such by the community of which this person claims to be a part.

3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

"Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or

other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

"Small business" means a business that is at least 51 percent independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens and, together with affiliates, has 250 or fewer employees or average annual gross receipts of $10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" does not include any county, city, or town.

"Women-owned business" means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

2013, c. 482; 2015, cc. 765, 775; 2016, c. 525.

§ 2.2-1605. Powers and duties of Department

A. The Department shall have the following powers and duties:

1. Coordinate as consistent with prevailing law the plans, programs, and operations of the state government that affect or may contribute to the establishment, preservation, and strengthening of small, women-owned, and minority-owned businesses;

2. Promote the mobilization of activities and resources of state and local governments, businesses and trade associations, universities, foundations, professional organizations, and volunteer and other groups towards the growth of small businesses and businesses owned by women and minorities, and facilitate the coordination of the efforts of these groups with those of state departments and agencies;

3. Establish a center for the development, collection, summarization, and dissemination of information that will be helpful to persons and organizations throughout the nation in undertaking or promoting procurement from small, women-owned, and minority-owned businesses;

4. Consistent with prevailing law and availability of funds, and according to the Director's discretion, provide technical and management assistance to small, women-owned, and minority-owned businesses and defray all or part of the costs of pilot or demonstration projects that are designed to overcome the special problems of small, women-owned, and minority-owned businesses;

5. Advise the Small Business Financing Authority on the management and administration of the Small, Women-owned, and Minority-owned Business Loan Fund created pursuant to § 2.2-2311.1;

6. Implement any remediation or enhancement measure for small, women-owned, or minority-owned businesses as may be authorized by the Governor pursuant to subsection C of § 2.2-4310 and develop regulations, consistent with prevailing law, for program implementation. Such regulations shall be developed in consultation with the state agencies with procurement responsibility and promulgated by those agencies in accordance with applicable law; and

7. Receive and coordinate, with the appropriate state agency, the investigation of complaints that a business certified pursuant to this chapter has failed to comply with its subcontracting plan under subsection D of § 2.2-4310. If the Department determines that a business certified pursuant to this chapter has failed to comply with the subcontracting plan, the business shall provide a written explanation.

B. In addition, the Department shall serve as the liaison between the Commonwealth's existing businesses and state government in order to promote the development of Virginia's economy. To that end, the Department shall:

1. Encourage the training or retraining of individuals for specific employment opportunities at new or expanding business facilities in the Commonwealth;

2. Develop and implement programs to assist small businesses in the Commonwealth in order to promote their growth and the creation and retention of jobs for Virginians;

3. Establish an industry program that is the principal point of communication between basic employers in the Commonwealth and the state government that will address issues of significance to business;

4. Make available to existing businesses, in conjunction and cooperation with localities, chambers of commerce, and other public and private groups, basic information and pertinent factors of interest and concern to such businesses;

5. Develop statistical reports on job creation and the general economic conditions in the Commonwealth; and

6. Administer the Small Business Jobs Grant Fund Program described in Article 2 (§ 2.2-1611 et seq.).

C. All agencies of the Commonwealth shall assist the Department upon request and furnish such information and assistance as the Department may require in the discharge of its duties.

2013, c. 482; 2014, cc. 41, 464; 2015, cc. 696, 697, 733; 2016, c. 520.

§ 2.2-1606. Powers of Director

As deemed necessary or appropriate to better fulfill the duties of the Department, the Director may:

1. With the participation of other state departments and agencies, develop comprehensive plans and specific program goals for small, women-owned, and minority-owned business programs;

establish regular performance monitoring and reporting systems to assure that goals of state agencies and institutions are being achieved; and evaluate the impact of federal and state support in achieving objectives.

2. Employ the necessary personnel or subcontract, according to his discretion, with localities to supplement the functions of business development organizations.

3. Assure the coordinated review of all proposed state training and technical assistance activities in direct support of small, women-owned, and minority-owned business programs to ensure consistency with program goals and to avoid duplication.

4. Convene, for purposes of coordination, meetings of the heads of departments and agencies, or their designees, whose programs and activities may affect or contribute to the purposes of this chapter.

5. Convene business leaders, educators, and other representatives of the private sector who are engaged in assisting the development of small, women-owned, and minority-owned business programs or who could contribute to their development for the purpose of proposing, evaluating, or coordinating governmental and private activities in furtherance of the objectives of this chapter.

6. Provide the managerial and organizational framework through which joint undertakings with state departments or agencies or private organizations can be planned and implemented.

7. Recommend appropriate legislative or executive actions.

8. Adopt regulations to implement certification programs for small, women-owned, and minority-owned businesses and employment services organizations, which regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 2 of § 2.2-4002. Such certification programs shall allow applications for certification to be submitted by electronic means as authorized by § 59.1-496 and the applicant to affix thereto his electronic signature, as defined in § 59.1-480. Such certification programs shall deny certification to vendors from states that deny like certifications to Virginia-based small, women-owned, or minority-owned businesses and employment services organizations or that provide a preference for small, women-owned, or minority-owned businesses and employment services organizations based in that state that is not available to Virginia-based businesses. The regulations shall (i) establish minimum requirements for certification of small, women-owned, and minority-owned businesses and employment services organizations; (ii) provide a process for evaluating existing local, state, private sector, and federal certification programs that meet the minimum requirements; and (iii) mandate certification, without any additional paperwork, of any prospective state vendor that has obtained certification under any certification program that is determined to meet the minimum requirements established in the regulations and of any employment services organization that has been approved by the Department for Aging and Rehabilitative Services.

9. Establish an interdepartmental board in accordance with § 2.2-1608 to supply the Director with information useful in promoting minority business activity.

2013, c. 482.

§ 2.2-1607. Nonstock corporation to assist small businesses

The Department may establish a nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as an instrumentality to assist the Department in providing support to the small business segment of the economy of the Commonwealth. The Department may do all things necessary to qualify such corporation as a certified development company under Subchapter V of the Small Business Investment Act of 1958 (15 U.S.C. § 695 et seq.), or any amendment or successor statute thereto, as well as regulations adopted thereunder by the U.S. Small Business Administration. Any action by the Department to establish such a corporation prior to July 1, 1986, is ratified and approved.

2013, c. 482.

§ 2.2-1608. Interdepartmental Board; cooperation with Department

A. The Interdepartmental Board established by the Director shall be composed of heads of the several departments and agencies of state government, or their respective designees, whose functions affect small, women-owned, and minority-owned businesses. The participating departments and agencies shall be determined by the Director of the Department. The Interdepartmental Board shall meet at the call of the Director and shall supply the Director with information useful in promoting small, women-owned, and minority-owned business development.

B. The head of each participating state department and agency or his designee shall furnish information, assistance, and reports to, and shall otherwise cooperate with, the Director in the performance of his duties as needed.

C. The head of each participating state department or agency shall, when so requested by the Director, designate an assistant or such other similar official to have primary and continuing responsibility for the participation and cooperation of that department or agency in matters concerning small, women-owned, and minority-owned businesses.

D. Each participating state department or agency shall, within constraints of law and availability of funding, continue all current efforts to foster and promote small, women-owned, and minority-owned businesses and to support small, women-owned, and minority-owned business programs, and shall cooperate with the Director in increasing the total state effort.

2013, c. 482.

§ 2.2-1609. (Effective until October 1, 2016) Use of vendors identified by public institutions of higher education as small, women-owned, and minority-owned businesses

For purposes of compliance with § 2.2-4310, a public institution of higher education that meets the conditions prescribed in subsection B of § 23-38.88 may procure goods, services, and

construction from vendors identified by such public institutions of higher education as small, women-owned, or minority-owned businesses that the institution has certified as such based on criteria approved by the Department. An institution exercising the authority granted by this section shall establish and follow internal procedures and processes designed to verify whether or not a vendor qualifies to be certified as a small, women-owned, or minority-owned business under the Department-approved criteria and the certification requirements. The institution shall notify the Department promptly of the certification and shall provide the Department with a copy of its written certification identifying the vendor as a small, women-owned, or minority-owned business and all application materials submitted by the vendor to the institution. Such certification shall remain in effect unless and until the Department notifies the institution that the vendor does not meet the certification requirements.

2013, c. 482.

§ 2.2-1609. (Effective October 1, 2016) Use of vendors identified by public institutions of higher education as small, women-owned, and minority-owned businesses

For purposes of compliance with § 2.2-4310, a public institution of higher education that meets the conditions prescribed in subsection A of § 23.1-1002 may procure goods, services, and construction from vendors identified by such public institutions of higher education as small, women-owned, or minority-owned businesses that the institution has certified as such based on criteria approved by the Department. An institution exercising the authority granted by this section shall establish and follow internal procedures and processes designed to verify whether or not a vendor qualifies to be certified as a small, women-owned, or minority-owned business under the Department-approved criteria and the certification requirements. The institution shall notify the Department promptly of the certification and shall provide the Department with a copy of its written certification identifying the vendor as a small, women-owned, or minority-owned business and all application materials submitted by the vendor to the institution. Such certification shall remain in effect unless and until the Department notifies the institution that the vendor does not meet the certification requirements.

2013, c. 482.

§ 2.2-1610. Reports and recommendations; collection of data

The Director shall, from time to time, submit directly or through an assistant to the Governor his recommendations for legislation or other action as he deems desirable to promote the purposes of this chapter.

The Director shall report, on or before November 1 of each year, to the Governor and the General Assembly the identity of the state departments and agencies failing to submit annual progress reports on small, women-owned, and minority-owned business procurement required by § 2.2-4310 and the nature and extent of such lack of compliance. The annual report shall include recommendations on the ways to improve compliance with the provisions of § 2.2-4310 and such other related matters as the Director deems appropriate.

The Director, with the assistance of the Comptroller, shall develop and implement a systematic data collection process that will provide information for a report to the Governor and General Assembly on state expenditures to small, women-owned, and minority-owned businesses during the previous fiscal year.

An institution exercising authority granted under this section shall promptly make available to the Department, upon request, copies of its procurement records, receipts, and transactions in regard to procurement from small, women-owned, and minority-owned businesses in order for the Department to ensure institution compliance with its approved reporting and certification criteria.

2013, c. 482.

Article 2 - SMALL BUSINESS JOBS GRANT FUND PROGRAM AND SMALL BUSINESS INVESTMENT GRANT FUND

§ 2.2-1611. Small Business Jobs Grant Fund Program; composition; general qualifications
A. There is hereby created the Small Business Jobs Grant Fund Program (the Program) to support private sector job creation by encouraging the expansion of existing Virginia businesses and the start-up of new business operations in Virginia.

B. To be eligible for assistance under the Program, a company shall:

1. Create or sustain employment for the Commonwealth in a basic sector industry or function, which would include businesses or functions that directly or indirectly derive more than 50 percent of their revenues from out-of-state sources, as determined by the Department;

2. Pay a minimum entry-level wage rate per hour of at least 1.35 times the federal minimum wage. In areas that have an unemployment rate of one and one-half times the statewide average unemployment rate, the wage rate minimum may be waived by the Department. Only full-time positions that qualify for benefits shall be eligible for assistance;

3. Submit copies of employer quarterly payroll reports provided by the company to the Virginia Employment Commission to verify the employment status of each position that has been included in a grant awarded under a component program; and

4. Meet such additional criteria as may be set forth by the Department.

2013, cc. 482, 547; 2014, cc. 41, 464.

§§ 2.2-1612 through 2.2-1614. Repealed
Repealed by Acts 2014, cc. 41 and 464, cl. 2.

§ 2.2-1615. Small Business Jobs Grant Fund Program
A. As used in this section:

"Base year" means the calendar year immediately preceding the 24-month period in which a small business creates new full-time positions making it eligible for grants under this section.

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is or may be capitalized by the company and that establishes or increases the productivity of the manufacturing facility, results in the utilization of a more advanced technology than is in use immediately prior to such investment, or both.

"New full-time position" means employment of a resident of the Commonwealth for an indefinite duration in the Commonwealth at a small business requiring (i) a minimum of 35 hours of an employee's time per week for the entire normal year of the small business's operation, which "normal year" shall consist of at least 48 weeks, or (ii) a minimum of 1,680 hours per year. Seasonal, temporary, or contract positions or positions created when a job function is shifted from an existing location in the Commonwealth shall not qualify as a new full-time position.

"Small business" means an independently owned and operated business that has been organized pursuant to Virginia law or maintains a principal place of business in Virginia and has 250 or fewer employees in its base year.

B. The Department shall develop the Small Business Jobs Grant Fund Program to assist Virginia small businesses job creation.

C. In addition to the requirements of subsection B of § 2.2-1611 regarding company eligibility, to be eligible for assistance under the Program a company shall (i) create a minimum of five net new full-time positions and (ii) make a new capital investment of at least $100,000.

The Secretary of Commerce and Trade may waive these requirements, but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

D. There is hereby created in the state treasury a permanent nonreverting fund to be known as the Small Business Jobs Grant Fund (the Fund). The Fund shall consist of (i) transfers from the Virginia Jobs Investment Program funded in the general appropriation act currently in effect and (ii) any other moneys designated for deposit to the Fund from any source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall be managed and administered within the Department.

E. Moneys in the Fund shall be used solely for the purpose of providing grants to small businesses that create at least five new full-time positions within any 24-month period. A small business meeting the conditions of this section shall be eligible to receive a grant from the Fund ranging from $500 to $2,000 per each new full-time position that has been created based on criteria established by the Department pursuant to subsection G.

In awarding grants, priority shall be given to small businesses creating new full-time positions in areas with an annual average unemployment rate of more than 125 percent of the statewide average unemployment rate.

F. Grant payments under this section shall be conditional upon the small business substantially retaining (i) the number of full-time positions in its base year plus (ii) the number of new full-time positions for which grants are to be paid. In no case shall the retention period, as determined by the Department, for any new full-time position for which a grant is to be paid be less than 12 months.

No grant shall be awarded or paid for any new full-time position created prior to July 1, 2010. No grant shall be awarded or paid for any new full-time position created solely as a result of a merger, acquisition, or similar business combination or a change in business form unless such new full-time position is moved into the Commonwealth from outside of the Commonwealth.

G. The Department shall establish criteria for determining the amount of the grant to be awarded for each eligible new full-time position created by a small business that will be based on the level of education, training, and experience required for the job. Such criteria shall also (i) prohibit a small business from receiving more than one grant under this section for the same position and (ii) require the employee to be employed in the new full-time position for at least 90 days prior to the award of the grant.

H. The Department shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Department may require the production of any document, instrument, certificate, or legal opinion or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Department.

2013, c. 482; 2014, cc. 41, 464.

§ 2.2-1616. Creation, administration, and management of the Small Business Investment Grant Fund

A. As used in this section:

"Authority" means the Virginia Small Business Financing Authority.

"Eligible investor" means an individual subject to the tax imposed by § 58.1-320. The term shall not include an individual who engages in the business of making debt or equity investments in private businesses, or to any person that would be allocated a portion of the grant under this section as a partner, shareholder, member, or owner of an entity that engages in such business.

"Fund" means the Small Business Investment Grant Fund.

"Pass-through entity" means the same as that term is defined in § 58.1-390.1.

"Qualified investment" means a cash investment in a qualified business in the form of equity or subordinated debt. However, an investment shall not be qualified if the taxpayer who holds such investment, or any of the taxpayer's family members, or any entity affiliated with such taxpayer, receives or has received compensation from the qualified business in exchange for services provided to such business as an employee, officer, director, manager, independent contractor, or otherwise in connection with or within one year before or after the date of such investment. For the purposes hereof, reimbursement of reasonable expenses incurred shall not be deemed to be compensation.

"Small business" means a corporation, pass-through entity, or other entity that (i) has annual gross revenues of no more than $5 million in its most recent fiscal year; (ii) has its principal office or facility in the Commonwealth; (iii) is engaged in business primarily in or does substantially all of its production in the Commonwealth; (iv) has not obtained during its existence more than $3 million in aggregate gross cash proceeds from the issuance of its equity or debt investments, not including commercial loans from national or state-chartered banking or savings and loan institutions; (v) has no more than 50 employees who are employed within the Commonwealth; and (vi) has been designated as such by the Authority pursuant to the provisions of this section.

"Subordinated debt" means indebtedness of a corporation, general or limited partnership, or limited liability company that (i) by its terms required no repayment of principal for the first three years after issuance, (ii) is not guaranteed by any other person or secured by any assets of the issuer or any other person, and (iii) is subordinated to all indebtedness and obligations of the issuer to national or state-chartered banking or savings and loan institutions.

B. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is hereby created in the state treasury a special non-reverting, permanent fund to be known as the Small Business Investment Grant Fund, to be administered by the Department. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which shall be in the form of grants pursuant to this section, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request bearing the signature of the Director. Grants from the Fund shall only be made to applications pursuant to this section.

C. An eligible investor that makes a qualified investment in a small business on or after July 1, 2012, but prior to January 1, 2019, that has been certified by the Authority pursuant to subsection D shall be eligible for a grant in an amount equal to 10 percent of the qualified investment. An eligible investor may apply for a grant for each qualified investment that is made to one or more small businesses not to exceed a total grant allocation from the Fund of $250,000 per eligible investor.

D. A small business shall apply with the Authority to receive qualified investments eligible for the grant pursuant to this section and shall provide to the Authority such information as the Authority deems necessary to demonstrate that it meets the qualifications set forth in subsection A.

E. Any eligible investor applying for a grant pursuant to this section shall submit an application to the Authority. Alternatively, a small business may apply to the Authority on behalf of an eligible investor. The Authority shall determine the amount of the grant allowable to the eligible investor for the year.

F. Unless the eligible investor transfers the equity received in connection with a qualified investment as a result of (i) the liquidation of the small business issuing such equity; (ii) the merger, consolidation, or other acquisition of such business with or by a party not affiliated with such business; or (iii) the death of the eligible investor, any eligible investor that fails to hold such equity for at least two years shall forfeit the grant and shall pay the Authority interest on the total allowed grant at the rate of one percent per month, compounded monthly, from the date the grant was awarded to the taxpayer. The Authority shall deposit any amounts received under this subsection into the general fund of the Commonwealth.

G. Grants shall be issued in the order that each completed eligible application is received by the Authority. In the event that the amount of eligible grants requested in a fiscal year exceeds the funds available in the Fund, such grants shall be paid in the next fiscal year in which funds are available.

H. An eligible investor shall not be awarded a grant pursuant to this section for any investment in a small business for which the eligible investor has been allowed a tax credit pursuant to § 58.1-339.4.

I. The Authority shall establish policies and procedures relating to (i) the certification of small businesses, (ii) the application for grants, and (iii) the recapture of grant awards claimed with interest in the event that the qualified investment is not held for the requisite period set forth in subsection F. Such policies and procedures shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

2013, c. 482; 2016, c. 520.

Article 3 - SMALL BUSINESS PERMITTING

§ 2.2-1617. One-stop small business permitting program

A. As used in this article, unless the context requires a different meaning:

"Business Permitting Center" or "Center" means the business registration and permitting center established by this section and located in and under the administrative control of the Department.

"Comprehensive application" means a document incorporating pertinent data from existing applications for permits covered under this section.

"Comprehensive permit" means the single document designed for public display issued by the Business Permitting Center that certifies state agency permit approval and that incorporates the endorsements for individual permits included in the comprehensive permitting program.

"Comprehensive permitting program" or "Program" means the mechanism by which comprehensive permits are issued and renewed, permit and regulatory information is disseminated, and account data is exchanged by state agencies.

"Permit" means the whole or part of any state agency permit, license, certificate, approval, registration, charter, or any form or permission required by law, to engage in activity associated with or involving the establishment of a small business in the Commonwealth.

"Permit information packet" means a collection of information about permitting requirements and application procedures custom assembled for each request.

"Regulatory" means all permitting and other governmental or statutory requirements establishing a small business or professional activities associated with establishing a small business.

"Regulatory agency" means any state agency, board, commission, or division that regulates one or more professions, occupations, industries, businesses, or activities.

"Renewal application" means a document used to collect pertinent data for renewal of permits covered under this section.

"Small business" means an independently owned and operated business that, together with affiliates, has 250 or fewer employees or average annual gross receipts of $10 million or less averaged over the previous three years.

"Veteran" means an individual who has served in the active military, naval, or air service and who was discharged or released therefrom under conditions other than dishonorable.

B. There is created within the Department the comprehensive permitting program (the Program). The Program is established to serve as a single access point to aid entrepreneurs in filling out the various permit applications associated with establishing a small business in Virginia. The Program in no way supersedes or supplants any regulatory authority granted to any state agency with permits covered by this section. As part of the Program, the Department shall coordinate with the regulatory agency, and the regulatory agency shall determine, consistent with applicable law, what types of permits are appropriate for inclusion in the Program as well as the rules governing the submission of and payment for those permits. The website of the Department shall provide access to information regarding the Program. The Department shall have the power and duty to:

1. Create a comprehensive application that will allow an entrepreneur, or an agent thereof, seeking to establish a small business, to create accounts that will allow them to acquire the appropriate permits required in the Commonwealth. The comprehensive application shall:

a. Allow the business owner to choose a business type and to provide common information, such as name, address, and telephone number, on the front page, eliminating the need to repeatedly provide common information on each permit application;

b. Allow the business owner to preview and answer questions related to the operation of the business;

c. Provide business owners with a customized to-do agency checklist, which checklist shall provide the permit applications pertinent to each business type and provide the rules, regulations, and general laws applicable to each business type as well as local licensing information;

d. Allow the business owner to submit permit applications by electronic means as authorized by § 59.1-496 and to affix thereto his electronic signature as defined in § 59.1-480;

e. Allow the business owner to check on the status of applications online and to receive information from the permitting agencies electronically; and

f. Allow a business owner to submit electronic payment of application or permitting fees for applications that have been accepted by the permitting agency.

2. Develop and administer a computerized system program capable of storing, retrieving, and exchanging permit information while protecting the confidentiality of information submitted to the Department to the extent allowable by law. Information submitted to the Department shall be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) as the same would apply were the information submitted directly to the Department or to any permitting agency.

3. Issue and renew comprehensive permits in an efficient manner.

4. Identify the types of permits appropriate for inclusion in the Program. The Department shall coordinate with the regulatory agency, and the regulatory agency shall determine, consistent with applicable law, what types of permits are appropriate for inclusion in the Program.

5. Incorporate permits into the Program.

6. Do all acts necessary or convenient to carry out the purposes of this chapter.

C. The Business Permitting Center shall compile information regarding the regulatory programs associated with each of the permits obtainable under the Program. This information shall include, at a minimum, a listing of the statutes and administrative rules requiring the permits and pertaining to the regulatory programs that are directly related to the permit. The Center shall provide information governed by this section to any person requesting it. Materials used by the Center to describe the services provided by the Center shall indicate that this information is available upon request.

D. Each state agency shall cooperate and provide reasonable assistance to the Department in the implementation of this section.

E. The State Corporation Commission and the Department of Small Business and Supplier Diversity shall:

1. By December 1, 2014, implement a hyperlink from the State Corporation Commission's eFile system to the Center that will facilitate the collection by the Center of a user's information to populate any forms that will be required to be completed at a future date, to the end that the user will not be required unnecessarily to reenter data or information into the forms when the user is accessing the Center; and

2. By June 30, 2018, fully integrate processes and forms into the Center and shall process all forms within 48 business hours from the time the applicant submits the form electronically.

The State Corporation Commission and the Center shall report on progress and any barriers to completion of the provisions of subdivision 1 biannually, on each December 1 and June 1, to the Governor, the Secretary of Commerce and Trade, the Secretary of Technology, and the chairs of the Senate Committees on Finance, General Laws and Technology, and Commerce and Labor and of the House Committees on Appropriations and Commerce and Labor.

F. Any person requiring permits that have been incorporated into the Program may submit a comprehensive application to the Department requesting the issuance of the permits. The comprehensive application form shall contain in consolidated form information necessary for the issuance of the permits.

G. The applicant, if not a veteran, shall include with the application the handling fee established by the Department. An applicant who is a veteran shall be exempt from payment of the handling fee prescribed by this subsection. The amount of the handling fee assessed against the applicant shall be set by the Department at a level necessary to cover the costs of administering the comprehensive permitting program.

H. The authority for approving the issuance and renewal of any requested permit that requires investigation, inspection, testing, or other judgmental review by the regulatory agency otherwise legally authorized to issue the permit shall remain with that agency. The Center may issue those permits for which proper fee payment and a completed application form have been received and for which no approval action is required by the regulatory agency.

I. Upon receipt of the application, and proper fee payment for any permit for which issuance is subject to regulatory agency action under subsection H, the Department shall immediately notify the State Corporation Commission or the regulatory agency with authority to approve the permit issuance or renewal requested by the applicant. The State Corporation Commission or the regulatory agency shall advise the Department within a reasonable time after receiving the notice of one of the following:

1. That the State Corporation Commission or the regulatory agency approves the issuance of the requested permit and will advise the applicant of any specific conditions required for issuing the permit;

2. That the State Corporation Commission or the regulatory agency denies the issuance of the permit and gives the applicant reasons for the denial;

3. That the application is pending; or

4. That the application is incomplete and further information from or action by the applicant is necessary.

J. The Department shall issue a comprehensive permit endorsed for all the approved permits to the applicant and advise the applicant of the status of other requested permits. The applicant shall be responsible for contesting any decision regarding conditions imposed or permits denied through the normal process established by statute or by the State Corporation Commission or the regulatory agency with the authority for approving the issuance of the permit.

K. Regulatory agencies shall be provided information from the comprehensive application for their permitting and regulatory functions.

L. The Department shall be responsible for directing the applicant to make all payments for applicable fees established by the regulatory agency directly to the proper agency.

M. There is hereby created in the state treasury a special nonreverting fund to be known as the Comprehensive Permitting Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of all moneys collected from the handling fee established by the Department pursuant to subsection G and such other funds as may be appropriated by the General Assembly. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to administer the Program. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Director of the Department.

N. Unless otherwise directed by the regulatory agency, the Department shall not issue or renew a comprehensive permit to any person under any of the following circumstances:

1. The person does not have a valid tax registration, if required;

2. The person is a corporation, limited liability company, business trust, limited partnership, or registered limited liability partnership that (i) is delinquent in the payment of fees or penalties collected by the State Corporation Commission pursuant to the business entity statutes it administers, (ii) does not exist, or (iii) is not authorized to transact business in the Commonwealth pursuant to one of the business entity statutes administered by the State Corporation Commission; or

3. The person has not submitted the sum of all fees and deposits required for the requested individual permit endorsements, any outstanding comprehensive permit delinquency fee, or other fees and penalties to be collected through the comprehensive permitting program.

O. The Department may adopt regulations in accordance with § 2.2-1606 as may be necessary to carry out the purposes of this section.

2013, cc. 155, 206, 482; 2014, c. 758.

Chapter 17 - DEPARTMENT OF TECHNOLOGY PLANNING [Repealed]

§§ 2.2-1700 through 2.2-1710. Repealed
Repealed by Acts 2003, cc. 981 and 1021.

Chapter 18 - DEPARTMENT OF THE TREASURY

Article 1 - GENERAL PROVISIONS

§ 2.2-1800. Department of the Treasury; State Treasurer
A. There is created a Department of the Treasury ("the Department"), which shall be under the direct control and supervision of the State Treasurer. The State Treasurer shall be appointed by the Governor to serve at his pleasure or until a successor is appointed and qualified.

B. The State Treasurer shall, under the direction and control of the Governor, exercise the powers and perform the duties conferred or imposed by law upon him and shall perform such other duties as may be required by the Governor.

Code 1950, § 2-149; 1966, c. 677, § 2.1-177; 1971, Ex. Sess., c. 125; 1976, c. 728; 1984, c. 720; 2000, cc. 25, 275; 2001, c. 844.

§ 2.2-1801. State Treasurer to appoint administrative assistants, etc
A. The State Treasurer shall appoint the administrative assistants, deputies and clerks allowed by law.

B. The State Treasurer shall appoint administrative assistants, who shall have authority to act for and perform the duties of the State Treasurer under his direction, supervision and control, and in the absence of the State Treasurer to perform all the duties of the office. Of such absence, the others shall be informed. When the absence of the State Treasurer is to be for more than five days at a time, notice thereof shall be given to the Governor.

C. In the event the administrative assistant is incapacitated from performing his duties during the absence of the State Treasurer, the Governor shall designate some other administrative assistant n the office to act during the absence of the State Treasurer, and in the event of the removal, resignation or death of the State Treasurer, the administrative assistant shall perform all the duties of the office until the vacancy is filled in the manner prescribed by law.

D. Such officers and their sureties shall be liable for any default or breach of duty of their administrative assistants respectively during their absence.

1950, §§ 2-145, 2-146, 2-147, 2-148; 1966, c. 677, §§ 2.1-173, 2.1-174, 2.1-175, 2.1-176; 2001, c. 844.

§ 2.2-1802. Payment of state funds into state treasury; deposits in state depositories; credit of fund not paid into general fund; exceptions as to endowments and gifts to institutions; appropriations by federal government

Every state department, division, officer, board, commission, institution or other agency owned or controlled by the Commonwealth, whether at the seat of government or not, collecting or receiving public funds, or moneys from any source, belonging to or for the use of the Commonwealth, or for the use of any state agency, shall hereafter pay the same promptly into the state treasury. All fees of office and commissions accruing to the State Treasurer shall be paid into the state treasury.

Any state department, division, officer, board, commission, institution or other agency at the seat of government shall deposit such moneys to the credit of the State Treasurer upon communicating with him and receiving instructions from him as to what state depository may be used for the purpose. In every such case the depositor shall retain a deposit receipt or a deposit certificate form certified by the bank receiving the deposit for every such deposit to the State Treasurer and send to the Comptroller a copy of the deposit receipt, certificate, or other documentation supporting the deposit, as prescribed by the Comptroller.

Any state department, division, officer, board, commission, institution or other agency not at the seat of government, other than county and city treasurers and clerks of courts, depositing such moneys to its or his credit in local banks shall deposit such moneys to the credit of the State Treasurer in a state depository duly designated in accordance with this chapter, and in every such case the depositor shall retain a deposit receipt or a deposit certificate form certified by the bank receiving the deposit for every deposit to the State Treasurer and send to the Comptroller a copy of the deposit receipt, certificate, or other documentation supporting the deposit, as prescribed by the Comptroller. Moneys deposited into such state depositories shall be transferred to a concentration bank as prescribed by the State Treasurer.

Moneys paid into the state treasury that are not now payable into the general fund of the state treasury shall be placed to the credit of the respective accounts that are required by law to be kept on the books of the Comptroller or to the credit of new accounts to be opened on the books of the Comptroller with such agencies so paying such moneys into the state treasury, respectively.

This chapter shall not apply to the endowment funds or gifts to institutions owned or controlled by the Commonwealth, or to the income from such endowment funds or gifts, or to private funds belonging to the students or inmates of state institutions. The cash as well as the notes of student loan funds shall be held by the respective institutions.

Appropriations made by the government of the United States to or for the benefit of any state institution or agency, however, shall be paid into the state treasury and used for the purposes for which such appropriations were made.

Code 1950, §§ 2-150, 14-16; 1964, c. 386, § 14.1-15; 1966, c. 677, § 2.1-180; 1988, c. 260; 1992, c. 326; 1998, c. 872; 2001, c. 844.

§ 2.2-1803. State Treasurer; regulation procedures for depositing money

The State Treasurer may adopt regulations or other directives establishing procedures for depositing moneys in depository banks and for reporting the deposits. The regulations may address, by way of explanation and not limitation: (i) the form of the required reports; (ii) the frequency of reports and deposits; (iii) the disposition of checks; and (iv) the establishment of banking relationships. All agencies and entities depositing moneys to the credit of the Treasurer of Virginia, including judicial and legislative service agencies, clerks of court, local treasurers or other officials performing similar duties, and political subdivisions, shall comply with the State Treasurer's regulations or other directives.

1982, c. 109, § 2.1-180.1; 2001, c. 844.

§ 2.2-1804. Payment by delivery of checks, etc., to State Treasurer; liability when not paid on presentation

Any public officer, or any firm or corporation, or any other person having to pay money into the treasury may make payment by delivering to the State Treasurer a check, draft or electronic transfer of funds, drawn or endorsed, payable to the State Treasurer, or his order, or may make payment by delivering to the State Treasurer the proper amount of lawful money. Should any check or draft not be paid on presentation, the amount thereof, with all costs, shall be charged to the person on whose account it was received, and his liability and that of his sureties, except the additional liability for costs, shall be as if he had never offered any such check, draft, or certificate of deposit.

Code 1950, § 2-152; 1966, c. 677, § 2.1-182; 2001, c. 844.

§ 2.2-1805. Records of receipts of such checks, etc.; reports to Comptroller

A. The State Treasurer shall keep a record of every such check, draft, or electronic transfer of funds, and of all such moneys received by him, and upon receipt shall cause the same to be placed to the credit of the Commonwealth with some state depository. If any check or draft is not paid on presentation, the State Treasurer shall immediately notify the Comptroller, who shall proceed to collect the amount from the person from whom the same was received by the Treasurer. The State Treasurer shall daily transmit to the Comptroller a detailed record of all receipts.

B. The State Treasurer shall not collect any money on a check or draft; but the same shall, in every case, be properly endorsed as required and deposited with some state depository for the credit of the Commonwealth.

Code 1950, §§ 2-153, 2-154; 1966, c. 677, §§ 2.1-183, 2.1-184; 2001, c. 844.

§ 2.2-1806. Investment of current funds in state treasury; withdrawals and transfers of moneys to be invested

The Governor and State Treasurer, acting jointly may whenever in their opinion there are funds in the state treasury in excess of the amount required to meet the current needs and demands of the Commonwealth, invest the excess funds in securities that are legal investments under the laws of the Commonwealth for public funds. The funds shall be invested in such of said securities as, in their judgment, will be readily convertible into money. Notwithstanding the provisions of § 2.2-1821 or any other provision relating to the withdrawal of state moneys in a state depository, withdrawals and transfers of state moneys to be so invested may be made by state depositories pursuant to oral including telephonic or electronic instructions of the State Treasurer or his duly authorized deputies. Written confirmations of the withdrawals and transfers shall be provided by the state depository no later than the close of business on the day following the withdrawal and transfer. Payment of state moneys pursuant to this procedure shall be valid against the Commonwealth.

Code 1950, § 2-154.1; 1956, c. 184; 1966, c. 677, § 2.1-185; 1981, c. 36; 2001, c. 844.

§ 2.2-1807. Investments, etc., in custody of State Treasurer

The State Treasurer shall be charged with the custody of all investments and invested funds of the Commonwealth or in possession of the Commonwealth in a fiduciary capacity, and shall keep the accounts of such investments. The State Treasurer shall also be charged with the custody of all bonds and certificates of the state debts, whether unissued or canceled, and with the receipt and delivery of state bonds and certificates for transfer, registration or exchange.

Code 1950, § 2-155; 1966, c. 677, § 2.1-186; 2001, c. 844.

§ 2.2-1808. State Treasurer may sell securities in general fund; exceptions; disposition of proceeds

The Treasurer may sell, transfer, and convey any notes, bonds, obligations or certificates of stock held in the general fund of the state treasury. The proceeds from any such sale or disposition shall immediately be paid into the general fund. This section shall apply to any present or future holdings.

Code 1950, p. 632, § 2-155.1; 1966, c. 677, § 2.1-187; 1970, c. 687; 1989, c. 28; 1991, cc. 349, 366; 2001, c. 844.

§ 2.2-1809. Warrants on state treasury to be listed and numbered

The State Treasurer shall keep a list of all warrants drawn upon the state treasury, numbered consecutively.

No information contained in the list of warrants shall be released for any purpose except as a means of establishing the status of a claim previously reported as having been paid when a person legally entitled to the funds presents evidence that a previously submitted claim has not been paid.

Code 1950, § 2-156; 1966, c. 677, § 2.1-188; 1993, c. 155; 2001, c. 844.

§ 2.2-1810. State Treasurer to keep accounts with depositories

The State Treasurer shall keep accounts on the books of his office with the different depositories, on which accounts balances shall be struck monthly, showing the amount in bank to the credit of the State Treasurer at the end of each month.

Code 1950, § 2-157; 1966, c. 677, § 2.1-189; 2001, c. 844.

§ 2.2-1811. Unpresented checks drawn by State Treasurer; replacement and payment

The State Treasurer shall report and remit, pursuant to the provisions of §§ 55-210.9, 55-210.12 and 55-210.14, all checks drawn by him on state depositories that have not been presented for payment within one year from the date of issuance.

Code 1950, § 2-158; 1966, c. 677, § 2.1-190; 1983, c. 190; 2001, c. 844.

§ 2.2-1812. Admissibility of reproductions of checks in evidence; compliance with subpoena

A. A reproduction of any check or draft or an enlargement of such reproduction drawn by the State Treasurer, when satisfactorily identified, shall be admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence. The introduction of a reproduced check or draft or of an enlargement thereof shall not preclude admission of the original. Any such check or draft, reproduction or enlargement purporting to be sealed, sealed and signed, or signed alone by the State Treasurer or on his behalf by his designee, may be considered satisfactorily identified and admitted as evidence, without any proof of the seal or signature, or of the official character of the person whose name is signed to it.

B. The State Treasurer or his designee, when served with any summons, subpoena, subpoena duces tecum or order, directing him to produce any check or draft kept by or in the possession of any agency or institution of the Commonwealth, may comply by certifying a reproduction or enlargement in accordance with subsection A and mailing the reproduction or enlargement in a sealed envelope to the clerk of court. Upon good cause shown, any court may direct the Treasurer or his designee to appear personally, notwithstanding any other provision of this section.

1979, c. 173, § 2.1-190.1; 1994, c. 16; 2001, c. 844.

Article 2 - STATE DEPOSITORIES

§ 2.2-1813. Deposits in banks and savings institutions designated as state depositories

Moneys to be paid into the state treasury shall be deposited in the banks and savings institutions designated as state depositories by the State Treasurer.

Code 1950, § 2-177; 1966, c. 677, § 2.1-209; 1974, c. 517; 1979, c. 215; 1996, c. 77; 2001, c. 844.

§ 2.2-1814. Amount and time limit of deposits

The State Treasurer may arrange for and make state deposits in such amounts and for such time as in his judgment the condition of the state treasury permits; however, no state deposit shall be

made for a period in excess of five years. The money deposited in a bank or savings institution in excess of the amount insured by the Federal Deposit Insurance Corporation or other federal insurance agency shall be fully collateralized by eligible collateral as defined in § 2.2-4401.

Code 1950, § 2-178; 1966, c. 677, § 2.1-210; 1971, Ex. Sess., cc. 139, 245; 1974, c. 517; 1978, c. 52; 1979, c. 215; 1984, c. 374; 1990, c. 3; 1996, c. 77; 2001, c. 844.

§ 2.2-1815. Security to be given by depositories holding state funds

No state funds shall be deposited in any depository unless it is a "qualified public depository" as defined in § 2.2-4401. For purposes of this article, "state funds" means public funds or moneys from any source, belonging to or for the use of the Commonwealth, or for the use of any state department, division, officer, board, commission, institution, or other agency or authority owned or controlled by the Commonwealth. All state funds shall be secured pursuant to the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.).

Code 1950, § 2-179; 1966, c. 677, § 2.1-211; 1996, cc. 364, 390; 2001, c. 844.

§ 2.2-1816. How public moneys transferred to depositories

All transfers of public moneys from one depository to another for any purpose shall be made by electronic funds transfer at the direction of the State Treasurer or his duly authorized deputies who shall order the transferor bank to make payment to the transferee bank for deposit to the credit of the State Treasurer.

Code 1950, § 2-188; 1966, c. 677, § 2.1-219; 1974, c. 232; 2001, c. 844.

§ 2.2-1817. Commonwealth shall not be liable for loss in collection of checks, etc

The Commonwealth shall not be liable for any loss resulting from lack of diligence on the part of any depository in forwarding, or in failing to collect, any check, draft, or electronic transfer of funds as is referred to in § 2.2-1804, or for the loss of any check, draft, or electronic transfer of funds in transmission through the mails or otherwise.

Code 1950, § 2-189; 1966, c. 677, § 2.1-220; 2001, c. 844.

§ 2.2-1818. Responsibility of Commonwealth for securities deposited with Commonwealth Transportation Board

The Commonwealth shall be responsible for the safekeeping of all bonds or other securities deposited with the Commissioner of Highways or the Commonwealth Transportation Board as surety on account of funds deposited in banks by division engineers of the Department of Transportation. If such bonds or securities or any of them are lost, destroyed or misappropriated, the Commonwealth shall make good such loss to the bank making the deposit of its bonds or other securities.

Upon the closing of accounts of district engineers with banks, its bonds and other securities then on deposit shall be returned to the bank.

Code 1950, § 2-192; 1966, c. 677, § 2.1-223; 2001, c. 844.

Article 3 - DISBURSEMENT FROM STATE TREASURY

§ 2.2-1819. Payments to be made in accordance with appropriations; submission and approval of quarterly estimates

No money shall be paid out of the state treasury except in accordance with appropriations made by law.

No appropriation to any department, institution or other agency of the state government, except the General Assembly and the judiciary, shall become available for expenditure until the agency submits an annual estimate of the amounts required for each activity to the Director of the Department of Planning and Budget and Governor for approval by the Governor.

Code 1950, § 2-200; 1966, c. 677, § 2.1-224; 1992, c. 582; 2001, c. 844.

§ 2.2-1820. Reserved

Reserved.

§ 2.2-1821. Deposits to be to credit of State Treasurer; how money withdrawn

All state moneys in a state depository shall stand on the books of such depository to the credit of the State Treasurer. The State Treasurer shall have authority to draw any of the money by his check, by electronic funds transfer, or by any means deemed appropriate and sound by the State Treasurer and approved by the Governor, drawn upon a warrant issued by the Comptroller. If any money to his credit shall be knowingly paid otherwise than upon his check, electronic funds transfer or by alternative means specifically approved by the State Treasurer and the Governor, drawn upon such warrant, the payment shall not be valid against the Commonwealth.

Code 1950, § 2-201; 1966, c. 677, § 2.1-226; 1974, c. 231; 1984, c. 374; 2001, c. 844.

§ 2.2-1822. Conditions to issuance of disbursement warrants

The Comptroller shall not issue a disbursement warrant unless and until he has audited, through the use of statistical sampling or other acceptable auditing techniques the bill, invoice, account, payroll or other evidence of the claim, demand or charge and satisfied himself as to the regularity, legality and correctness of the expenditure or disbursement, and that the claim, demand or charge has not been previously paid. If he is so satisfied, he shall approve the same; otherwise, he shall withhold his approval. In order that such regularity and legality may appear, the Comptroller may, by general rule or special order, require the certification or other evidence as the circumstances may demand.

Code 1950, § 2-202; 1966, c. 677, § 2.1-227; 1972, c. 205; 2001, c. 844.

§ 2.2-1822.1. Recovery audits of state contracts

The Department of Accounts shall procure the services of one or more private contractors, in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.), to conduct systematic recovery audits of state agency contracts. Such recovery audit contracts shall be performance-based and shall contain a provision that authorizes the contractor to be paid a percentage of any

payment error that is recovered by such contractor. Individual recovery audits shall consist of the review of contracts to identify payment errors made by state agencies to vendors and other entities resulting from (i) duplicate payments, (ii) invoice errors, (iii) failure to apply applicable discounts, rebates, or other allowances, or (iv) any other errors resulting in inaccurate payments. The Department of Accounts shall report on the status and effectiveness of recovery audits, including any savings realized, to the Chairs of the House Committee on Appropriations and the Senate Committee on Finance by January 1 of each year.

2004, c. 644; 2005, c. 109.

§ 2.2-1823. Lump-sum transfers prohibited

Lump-sum transfers of appropriations to state departments, divisions, offices, boards, commissions, institutions and other agencies owned or controlled by the Commonwealth, whether at the seat of government or not, shall be prohibited except for the payment to or distribution among the political subdivisions of the Commonwealth of any appropriations made to them by law.

Code 1950, § 2-203; 1966, c. 677, § 2.1-228; 2001, c. 844.

§ 2.2-1824. Petty cash, payroll and other funds

A reasonable petty cash, payroll or other imprest fund may be allowed each state department, institution, board, commission or other agency. The amount of such fund shall be fixed by the Comptroller in each case, but these funds shall be reimbursed only upon vouchers audited by the Comptroller.

Code 1950, § 2-204; 1966, c. 677, § 2.1-229; 1972, c. 240; 2001, c. 844.

§ 2.2-1825. Issuance of warrants for payment of claims; Comptroller to keep and sign register of warrants issued; signing of checks drawn on such warrants; electronic payment systems

After the allowance of any claim that is payable out of the state treasury, under any of the provisions of this title, a warrant shall be issued for the sum to be paid. A register of all warrants so issued shall be kept by the Comptroller, which register and a duplicate register shall, from time to time, be signed by the Comptroller or by such deputy he may designate for that purpose. The Comptroller shall not be required to sign the warrants.

All checks drawn upon warrants shown by the register and duplicate register, signed by the Comptroller or his deputy, shall be signed by the State Treasurer, or by such deputy as he may designate for that purpose. The signature may be made by means of a mechanical or electrical device selected by the State Treasurer. The device shall be safely kept so that no one will have access to it except the State Treasurer and his deputies authorized to sign warrants.

However, when deemed appropriate, the State Treasurer may utilize various electronic payment systems in lieu of issuing checks drawn upon warrants.

Code 1950, § 2-206; 1966, c. 677, § 2.1-231; 1984, c. 374; 2001, c. 844.

§ 2.2-1826. Issuance of replacement warrants generally

Upon satisfactory proof presented to the Comptroller or to the State Treasurer that any warrant drawn by either the Comptroller or the State Treasurer, or by a predecessor, upon the state treasury has been lost or destroyed before having been paid, the Comptroller or State Treasurer who issued, or from whose office was issued, the original warrant shall issue a replacement of the original warrant. The Comptroller or the State Treasurer may require a bond to be executed, with such security as is approved by him, payable to the Commonwealth, in the amount of the warrant and conditioned to save harmless the Commonwealth from any loss occasioned by issuing the replacement warrant. Every replacement warrant shall show upon its face that it is a replacement.

In the discretion of the State Treasurer, state warrants in payment and redemption of previously lost or otherwise unpaid warrants may be issued directly to the person entitled to the money as the owner, heir, legatee, or as fiduciary of the estate of the deceased owner, heir, or legatee, and in such cases shall not be issued to a named attorney-in-fact, agent, assignee, or any other person regardless of a written instruction to the contrary. In such circumstances, the State Treasurer may refuse to recognize and is not bound by any terms of a power of attorney or assignment that may be presented as having been executed by a person as the purported owner, heir, legatee or fiduciary of the estate of a deceased owner of such warrants.

Code 1950, § 2-207; 1966, c. 677, § 2.1-232; 1982, c. 409; 1993, c. 155; 2001, c. 844.

§ 2.2-1827. When replacement warrant issued without bond

No bond shall be required where an original warrant was issued to (i) any eleemosynary or educational institution of the Commonwealth for money appropriated to the institution, (ii) the treasurer of any county or city in the Commonwealth for money apportioned to it out of the school fund and to be disbursed by the treasurer in payment of school warrants, or to be issued to any district school board of any county for money to be disbursed by the board in payment and settlement of any claims lawfully contracted in the operation of the public schools in the district, or in the construction of graded school buildings, or (iii) the treasurer of any county or city in the Commonwealth for money apportioned to it from the gas tax, and such warrant has been lost or destroyed without having been paid. The Comptroller or the State Treasurer who issued the original warrant, or from whose office it was issued, or if issued by his predecessor, shall issue a replacement warrant. The replacement warrant shall show on its face that it is a replacement and shall be issued within thirty days from the date of issuing the original warrant, upon satisfactory proof of the loss or destruction of the original warrant.

Code 1950, § 2-208; 1966, c. 677, § 2.1-233; 2001, c. 844.

Article 4 - REVENUE STABILIZATION FUND

§ 2.2-1828. Creation of Revenue Stabilization Fund

There is established a fund to be known as the Revenue Stabilization Fund (the "Fund") for the stabilization of the expected revenues of the Commonwealth. The Fund shall be available to offset, in

part, anticipated shortfalls in revenues when appropriations based on previous forecasts exceed expected revenues in subsequent forecasts.

1992, c. 316, § 2.1-191.1; 2001, c. 844.

§ 2.2-1829. Reports of Auditor of Public Accounts; Fund deposits and withdrawals

A. On or before December 1 of each year, the Auditor of Public Accounts shall report to the General Assembly the certified tax revenues collected in the most recently ended fiscal year. The Auditor shall, at the same time, provide his report on (i) the 15 percent limitation and the amount that could be paid into the Fund and (ii) the amount necessary for deposit for the next fiscal year into the Fund in order to satisfy the mandatory deposit requirement of Article X, Section 8 of the Constitution of Virginia. The Governor shall include any such amount in his budget bill submitted to the General Assembly pursuant to § 2.2-1509. A schedule of deposits may be provided for in the Appropriation Act.

B. If the report of the Auditor of Public Accounts, pursuant to subsection A, indicates that the annual percentage increase in the certified tax revenues collected in the most recently ended fiscal year is eight percent or greater than the certified tax revenues collected for the immediately preceding fiscal year and that such annual percentage increase in the certified tax revenues for the most recently ended fiscal year is also equal to or greater than 1.5 times the average annual percentage increase in the certified tax revenues collected in the six fiscal years immediately preceding the most recently ended fiscal year, the Governor shall include in his budget recommendations, submitted to the General Assembly in the subsequent session pursuant to § 2.2-1509, an additional amount for deposit to the Fund in excess of any mandatory deposit to the Fund required by Article X, Section 8 of the Constitution of Virginia. Such additional amount shall be equal to at least 25 percent of the product of the certified tax revenues collected in the most recently ended fiscal year multiplied by the difference between the annual percentage increase in the certified tax revenues collected for the most recently ended fiscal year and the average annual percentage increase in the certified tax revenues collected in the six fiscal years immediately preceding the most recently ended fiscal year. Any such additional deposits to the Fund shall be included in the Governor's budget recommendations submitted to the General Assembly in the subsequent session pursuant to § 2.2-1509 only if the estimate of general fund revenues prepared in accordance with § 2.2-1503 for the fiscal year in which the deposit is to be made is at least five percent greater than the actual general fund revenues for the immediately preceding fiscal year.

C. The State Comptroller shall draw such warrants as appropriated and the State Treasurer shall deposit such warrants into the Fund. No amounts shall be withdrawn from the Fund except pursuant to appropriations made by the General Assembly in accordance with § 2.2-1830. However, if any amounts accrue, such as through interest or dividends, to the credit of the Fund in excess of the 15 percent limitation calculated by the Auditor of Public Accounts, any excess shall be paid into the general fund pursuant to Article X, Section 8 of the Constitution of Virginia.

D. For the purposes of the Comptroller's preliminary and final annual reports as required by § 2.2-813, all balances remaining in the Fund on June 30 of each fiscal year shall be considered to be a portion of the fund balance of the general fund of the state treasury.

1992, c. 316, § 2.1-191.2; 1993, c. 26; 2001, c. 844; 2003, cc. 755, 759; 2011, c. 725.

§ 2.2-1830. Decline in forecasted revenues

In the event that a revised general fund forecast presented to the General Assembly reflects a decline when compared to total general fund revenues appropriated, and the decrease is more than two percent of certified tax revenues collected in the most recently ended fiscal year, the General Assembly may appropriate an amount for transfer from the Fund to the general fund to stabilize the revenues of the Commonwealth. However, in no event shall the transfer exceed more than one-half of the forecasted shortfall in revenues.

1992, c. 316, § 2.1-191.3; 2001, c. 844.

§ 2.2-1831. Sources or components of "general fund revenues."

Any revised general fund revenue forecast presented to the General Assembly for purposes of this article shall consist of the same revenue sources or components as those on which the total general fund revenues appropriated are based.

1992, c. 316, § 2.1-191.4; 2001, c. 844.

Article 5 - DIVISION OF RISK MANAGEMENT

§ 2.2-1832. Division of Risk Management

The Division of Risk Management (the "Division"), formerly within the Department of General Services, is hereby transferred to the Department (the "Department") of the Treasury and shall exercise the powers and duties described in this article.

1980, c. 488, § 2.1-526.1; 1988, c. 848; 2000, cc. 618, 632, § 2.1-191.5; 2001, c. 844.

§ 2.2-1833. Property and insurance records to be maintained

The Division shall establish and maintain a file of state-owned buildings and contents, hereinafter inclusively referred to as buildings or properties, and the actual cash value or replacement cost value if insured or replacement cost basis thereof, and the amount of fire and extended coverage, vandalism and malicious mischief, optional perils or all risk insurance coverage thereon. All agencies of the Commonwealth shall keep the Division informed as to the status of all properties under their control.

1980, c. 488, § 2.1-526.2; 1982, c. 318; 1988, c. 848; 2000, cc. 618, 632, § 2.1-191.6; 2001, c. 844.

§ 2.2-1834. Inspection of state-owned properties for insurance purposes; determination of coverage; procurement, discontinuance, etc., of insurance

A. The Division may inspect or administer a program of self-inspection for all state-owned properties and confer with the proper officials or employees of the several agencies of the

Commonwealth for the purpose of determining (i) insurance coverages that are necessary with respect to properties under their control and (ii) the manner whereby savings and costs of such insurance may be made. It may seek the assistance of insurance companies and their representatives, and the State Fire Marshal, in devising means by which hazards may be reduced or eliminated. The Division shall have final responsibility with respect to coverage, noncoverage, provisions of policies, quantity and type of fire and extended coverage, vandalism and malicious mischief, and optional perils or all risk insurance coverage. The Governor may exempt any agency, institution of higher education, or part thereof from any part of the risk management and insurance program.

B. The Division may change or discontinue fire and extended coverage, vandalism and malicious mischief, optional perils or all risk insurance coverage carried pursuant to bond indentures and other contractual requirements, provided the change or discontinuance meets with the written approval of the trustee of the bond indenture and those signatory to the contracts.

C. As its programs are implemented, the Division shall assume the sole responsibility, with the approval of the Governor, for purchasing insurance, self-insuring or combining insurance and self-insurance (i) on all properties of the Commonwealth or (ii) for protection of liabilities or other casualties.

1980, c. 488, § 2.1-526.3; 1982, c. 318; 1988, c. 848; 1996, cc. 475, 510; 2000, cc. 618, 632, § 2.1-191.7; 2001, c. 844.

§ 2.2-1835. State Insurance Reserve Trust Fund

A. The State Insurance Reserve Trust Fund (the "Fund") is established and shall consist of the payments required by subsection B. The Fund shall be under the management and control of the Division, and any claims for losses payable out of the Fund shall be at the direction of the Division. The Fund shall be invested as provided in § 2.2-1806 and interest shall be added to the fund as earned.

B. Each agency, department, division, or institution of state government having control over any state structure and contents thereof, or that participates in any program of insurance operated by the Division, shall pay each year into the Fund or any trust fund established pursuant to the provisions of this article amounts necessary to maintain the trusts at levels of funding deemed adequate by the Division. The Division shall set the premium and administrative costs to be paid to it for providing an insurance plan established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts, at the time and in the manner that the Division in its sole discretion requires. Premiums and administrative costs need not be uniform among participants, but shall be set to best ensure the financial stability of the plan. Whenever any building or structure is under the control of two or more agencies, departments, divisions or institutions of the Commonwealth, the payment required shall be prorated upon the basis of percentage of the area controlled.

C. In the event of loss or damage exceeding $1000 to property on which there is no insurance recovery or limited insurance recovery as a consequence of any action by the Division resulting in noncoverage, reduced insurance, elimination of insured perils or otherwise, the Division shall determine the amount, if any, payable out of the Fund, and such amount, when approved by the Governor, shall be final. The amount payable shall be used for the purpose of restoring the damaged structure or rebuilding it, as the circumstances may require, but in no event shall the amount payable on account of such loss exceed the actual cash value or the replacement cost value of the property in accordance with the basis of insurance, nor shall the amount payable when added to the insurance recovered exceed the actual cash value or the replacement cost value of the property, as recorded in the property and insurance records of the Division.

D. In addition to the amounts payable under subsection C, the costs of operating the Division that are properly allocated to its functions concerning the Fund and other administrative and contractual costs of the Division not otherwise provided for shall be paid out of the Fund, for which purposes such funds are appropriated.

1980, c. 488, § 2.1-526.5; 1982, c. 318; 1988, c. 848; 1996, cc. 475, 510; 2000, cc. 618, 632, § 2.1-191.8; 2001, c. 844.

§ 2.2-1836. Insurance plan for state-owned buildings and state-owned contents of buildings

A. Subject to the approval of the Governor, the Division shall establish a risk management plan that may be self-insurance or a combination of self-insurance and purchased insurance to provide coverage on (i) state-owned buildings and (ii) state-owned contents of buildings owned by the Commonwealth or of buildings not owned by the Commonwealth that are occupied in whole or in part by an agency of the Commonwealth.

B. Any insurance plan established pursuant to this section may provide, but not be limited to, physical damage coverage against the perils of (i) fire and lightning; (ii) extended coverage for windstorm, hail, smoke, explosion, other than that caused by steam pressure vessels, riot, riot attending a strike, civil commotion, aircraft and vehicles not owned by the Commonwealth; (iii) vandalism and malicious mischief; (iv) optional perils; and (v) all risk insurance.

C. Any insurance plan established pursuant to this section shall provide for the establishment of a trust fund or contribution to the State Insurance Reserve Trust Fund for the payment of claims covered under such a plan, which are not recoverable from purchased insurance. The funds shall be invested as provided in § 2.2-1806 and interest shall be added to the fund as earned. The trust fund shall also provide for payment of administrative costs, contractual costs and other expenses related to the administration of the plan.

D. The insurance plan for state-owned buildings and state-owned contents of buildings shall be submitted to the Governor for approval prior to implementation.

1980, c. 488, § 2.1-526.7; 1982, c. 318; 1988, c. 848; 2000, cc. 618, 632, § 2.1-191.10; 2001, c. 844.

§ 2.2-1837. Risk management plan for public liability

A. Subject to the approval of the Governor, the Division shall establish a risk management plan, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide:

1. Protection against liability imposed by law for damages resulting from any claim:

a. Made against any state department, agency, institution, board, commission, officer, agent, or employee for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization;

b. Made against participants, other than professional counsel, in student disciplinary proceedings at public institutions of higher education for nonmalicious acts or omissions of any nature in the course and scope of participation in the proceedings; or

c. Resulting from an authorized indemnification agreement entered into by a Virginia public institution of higher education in accordance with this subsection.

A Virginia public institution of higher education may execute an indemnification agreement if the Governor (i) considers in advance of execution (a) the institution's analysis of the relevant public benefit and risk of liability, (b) the Division's charge to be assessed against the institution for providing insurance or self-insurance coverage for the claims resulting from the indemnification agreement, and (c) the Office of the Attorney General's comments and (ii) determines that execution is necessary to further the public's best interests.

The indemnification agreement shall limit the institution's total liability to a stated dollar amount and shall notify the contractor that the full faith and credit of the Commonwealth are not pledged or committed to payment of the institution's obligation under the agreement. However, no such institution shall be authorized to enter into an indemnification agreement in accordance with this subsection to indemnify any person or entity against damages arising from a sponsored project conducted by such institution. For the purposes of this section, a "sponsored project" is a research, instruction, or service project conducted at a Virginia public institution of higher education pursuant to a grant, cooperative agreement, or other contract;

2. Protection against tort liability and incidental medical payments arising out of the ownership, maintenance or use of buildings, grounds or properties owned or leased by the Commonwealth or used by state employees or other authorized persons in the course of their employment;

3. For the payment of attorney fees and expenses incurred in defending such persons and entities concerning any claim that (i) arises from their governmental employment or authorization, that (ii) arises from their participation in such student disciplinary proceedings, or (iii) is described in any such indemnification agreement, where the Division is informed by the Attorney General's office that it will not provide a defense due to a conflict or other appropriate reason; and

4. For the payment of attorney fees and expenses awarded to any individual or entity against the Commonwealth, or any department, agency, institution, board, commission, officer, agent, or employee of the Commonwealth for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity, or in reliance upon any constitutional provision, or law of the Commonwealth. It is the obligation of the Division to provide for such indemnification regardless of whether there is a request for or an award of damages associated with the award of such fees and expenses.

a. As a condition of coverage for the payment of attorney fees and expenses, the department, agency, institution, board, commission, officer, agent, or employee of the Commonwealth shall (i) promptly notify the Division of the commencement of any claim, suit, action or other proceeding prior to its settlement, (ii) provide the Division with full nonprivileged information on the matter as requested, and (iii) permit the Division to participate in the investigation of such claim, suit, action or other proceeding. Failure to promptly notify the Division or to reasonably cooperate may, at the Division's discretion, result in no payment or a reduced payment being made.

b. The Division shall set the premium and administrative costs to be paid to it for providing payment of attorney fees and expenses awarded pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts, at the time and in the manner that the Division in its sole discretion requires. Premiums and administrative costs shall be set to best ensure the financial stability of the plan.

B. Any risk management plan established pursuant to this section shall provide for the establishment of a trust fund or contribution to the State Insurance Reserve Trust Fund for the payment of claims covered under the plan. The funds shall be invested as provided in § 2.2-1806 and interest shall be added to the fund as earned. The trust fund shall also provide for payment of administrative costs, contractual costs, and other expenses related to the administration of such plan.

C. The risk management plan for public liability shall be submitted to the Governor for approval prior to implementation.

D. The risk management plan established pursuant to this section shall provide protection against professional liability imposed by law as provided in § 24.2-121, resulting from any claim made against a local electoral board, any of its members, any general registrar, or any employee of or paid assistant to a registrar for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization, regardless of whether or not the civil action requests monetary damages, subject to the limitations of the risk management plan.

E. The risk management plan established pursuant to this section shall provide protection against any claim made against any soil and water conservation district, director, officer, agent or employee thereof, (i) arising out of the ownership, maintenance or use of buildings, grounds or

properties owned, leased or maintained by any such district or used by district employees or other authorized persons in the course of their employment or (ii) arising out of acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

F. The risk management plan established pursuant to this section shall provide protection against professional liability imposed by law for damages resulting from any claim made against a local school board selection commission or local school board selection commission members for acts or omissions of any nature while acting in an authorized governmental or proprietary capacity and in the course and scope of authorization, subject to the limitations of the risk management plan.

G. The risk management plan established pursuant to this section shall provide coverage for any matter that involves or could involve an action or proceeding against a judge, the nature of which is designed to determine whether discipline or other sanction of the judge for malfeasance or misfeasance is appropriate or to otherwise determine the fitness of the judge to hold office or to continue his employment. No coverage or indemnification shall be made pursuant to this subsection when the Supreme Court of Virginia finds that the judge should be censured or removed from office pursuant to Section 10 of Article VI of the Constitution of Virginia or statutes enacted pursuant thereto.

H. The risk management plan established pursuant to this section shall provide protection against claims made against chaplains by persons incarcerated in a state correctional facility, a juvenile correctional center, or a facility operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.) arising out of services provided by the chaplains to such incarcerated persons, regardless of whether such services were provided on a volunteer basis or for compensation. For the purposes of this subsection, chaplains shall include only those persons, who, at the time any claim may arise, were acting pursuant to, and in compliance with, an agreement between the chaplain or an organization to which the chaplain belongs, and the Department of Corrections, the Department of Juvenile Justice, or an operator of a facility operated pursuant to the Corrections Private Management Act.

1980, c. 488, § 2.1-526.8; 1982, c. 318; 1986, cc. 554, 558; 1988, cc. 763, 780, 848; 1990, c. 484; 1995, c. 794; 2000, cc. 618, 632, § 2.1-191.11; 2001, c. 844; 2002, c. 765; 2003, c. 828; 2005, cc. 492, 548; 2011, c. 359; 2012, c. 366.

§ 2.2-1838. Insurance of state motor vehicles

A. Subject to the approval of the Governor, the Division shall establish a risk management plan, which may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide (i) protection for the Commonwealth, its officers and employees and other authorized persons against tort liability and incidental medical payments arising out of the ownership, maintenance or use of motor vehicles owned or leased by the Commonwealth or used by state employees or other authorized persons in the course of their employment; and (ii) for

payment of attorneys' fees and expenses incurred in defending such persons and entities concerning any claim that arises from their governmental employment or authorization where the Division is informed by the Attorney General's office that it will not provide a defense due to a conflict or other appropriate reason.

B. The risk management plan shall provide for the establishment of a trust fund or a contribution to the State Insurance Reserve Trust Fund for the payment of claims covered under the plan arising out of the ownership, maintenance or use of motor vehicles owned or leased by the Commonwealth or used by state employees or other authorized persons in the course of their employment. The funds shall be invested as provided in § 2.2-1806 and interest shall be added to the fund as earned. The plan shall also provide for payment of the expenses related to the administration of a motor vehicle insurance program for the Commonwealth. The risk management plan shall be submitted to the Governor for approval prior to implementation.

C. Any risk management plan for state motor vehicles established pursuant to this section shall provide (i) protection against the uninsured motorist at limits not less than those provided in § 46.2-100, (ii) incidental medical payments of not less than $5,000 per person to state employees and other authorized persons, and (iii) recovery of damages for loss of use of a motor vehicle, as provided in § 8.01-66.

1980, c. 488, § 2.1-526.6; 1982, c. 318; 1988, c. 848; 2000, cc. 618, 632, § 2.1-191.9; 2001, c. 844.

§ 2.2-1839. Risk management plans administered by the Department of the Treasury's Risk Management Division for political subdivisions, constitutional officers, etc

A. The Division shall establish one or more risk management plans specifying the terms and conditions for coverage, subject to the approval of the Governor, and which plans may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages and against incidental medical payments resulting from any claim made against any county, city or town; authority, board, or commission; sanitation, soil and water, planning or other district; public service corporation owned, operated or controlled by a locality or local government authority; constitutional officer; state court-appointed attorney; any attorney for any claim arising out of the provision of pro bono legal services for custody and visitation to an eligible indigent person under a program approved by the Supreme Court of Virginia or the Virginia State Bar; any receiver for an attorney's practice appointed under § 54.1-3900.01 or 54.1-3936; any attorney authorized by the Virginia State Bar for any claim arising out of the provision of pro bono legal services in a Virginia State Bar approved program; affiliate or foundation of a state department, agency or institution; any clinic that is organized in whole or primarily for the delivery of health care services without charge; volunteer drivers for any nonprofit organization providing transportation for persons who are elderly, disabled, or indigent to medical treatment and services, provided the volunteer driver has successfully completed training approved by the Division; any local chapter or program of the Meals on Wheels Association of America or any area agency on aging, providing meal and nutritional services to persons who are

elderly, homebound, or disabled, and volunteer drivers for such entities who have successfully completed training approved by the Division; any individual serving as a guardian or limited guardian as defined in § 64.2-2000 for any individual receiving services from a community services board or behavioral health authority or from a state facility operated by the Department of Behavioral Health and Developmental Services; for nontransportation-related state construction contracts less than $500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317; or the officers, agents or employees of any of the foregoing for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

For the purposes of this section, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

For purposes of this section, a sheriff or deputy sheriff shall be considered to be acting in the scope of employment or authorization when performing any law-enforcement-related services authorized by the sheriff, and coverage for such service by the Division shall not be subject to any prior notification to or authorization by the Division.

B. In any case in which the coverage provided by one or more risk management plans established pursuant to this section applies, no sheriff or deputy shall be liable for any verdict or civil judgment in his individual capacity in excess of the approved maximum coverage amount as established by the Division and set forth in the respective coverage plans, which shall be at least $1.5 million for sheriffs and deputies. If a jury returns an award in excess of $1.5 million, the judge shall reduce the award and enter judgment against the sheriff or deputy for such damages in the amount of $1.5 million, provided that this shall not affect the ability of a court to order a remittitur. Nothing in this subsection shall be construed to limit the ability of a plaintiff to pursue the full amount of any judgment against a sheriff or deputy from any available insurance coverage. To the extent that any such award exceeds the coverage available under such risk management plans, the sheriff and any deputy shall be considered immune defendants under subsection F of § 38.2-2206. Automobile insurance carried by a sheriff or deputy in his personal capacity shall not be available to satisfy any verdict or civil judgment under the circumstances in which coverage is provided by one or more risk management plans.

C. Participation in the risk management plan shall be voluntary and shall be approved by the participant's respective governing body or by the State Compensation Board in the case of constitutional officers; by the office of the Executive Secretary of the Virginia Supreme Court in the case of state court-appointed attorneys, including attorneys appointed to serve as receivers under § 54.1-3900.01 or 54.1-3936, or attorneys under Virginia Supreme Court approved programs; by the Virginia State Bar in the case of attorneys providing pro bono services under Virginia State Bar approved programs; by the Commissioner of the Department of Behavioral Health and Developmental Services for any individual serving as a guardian or limited guardian for any individual

receiving services from a state facility operated by the Department or by the executive director of a community services board or behavioral health authority for any individual serving as a guardian or limited guardian for any individual receiving services from the board or authority; and by the Division. Upon such approval, the Division shall assume sole responsibility for plan management, compliance, or removal. The Virginia Supreme Court shall pay the cost for coverage of eligible persons performing services in approved programs of the Virginia Supreme Court. The Virginia State Bar shall pay the cost for coverage of eligible attorneys providing pro bono services in Virginia State Bar approved programs. The Department of Behavioral Health and Developmental Services shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for any individual receiving services from a state facility operated by the Department. The applicable community services board or behavioral health authority shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for individuals receiving services from the board or authority.

D. The Division shall provide for the legal defense of participating entities and shall reserve the right to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by the Division.

E. The risk management plan established pursuant to this section shall provide for the establishment of a trust fund for the payment of claims covered under such plan. The funds shall be invested in the manner provided in § 2.2-1806 and interest shall be added to the fund as earned.

The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative costs, contractual costs and all other expenses related to the administration of such plan.

F. The Division shall, in its sole discretion, set the premium and administrative cost to be paid to it for providing a risk management plan established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts at the time and in the manner that the Division in its sole discretion shall require. The premiums and administrative costs need not be uniform among participants, but shall be set so as to best ensure the financial stability of the plan.

G. Notwithstanding any provision to the contrary, a sheriff's department of any city or county, or a regional jail shall not be precluded from securing excess liability insurance coverage beyond the coverage provided by the Division pursuant to this section.

1986, c. 82, § 2.1-526.8:1; 1988, c. 848; 1995, c. 30; 2000, cc. 618, 632, § 2.1-191.12; 2001, c. 844; 2003, cc. 23, 49; 2004, cc. 121, 529; 2005, cc. 184, 212; 2006, c. 713; 2007, c. 773; 2009, cc. 265, 568, 813, 840; 2011, c. 789; 2012, cc. 476, 507; 2013, c. 555; 2014, cc. 35, 708.

§ 2.2-1839.1. Not in effect

Not in effect.

§ 2.2-1840. Blanket surety bond plan for state and local employees

A. Subject to the approval of the Governor, the Division shall establish a program of blanket surety bonding to provide surety for the faithful performance of duty for all state employees required by statute to be bonded, and for other agency employees handling funds or having access to funds whose function, in the opinion of the agency head and the Division, should be bonded.

B. Local employees, including superintendents and jail officers of regional jail facilities as described in § 53.1-110, local constitutional officers, and those employees of the Supreme Court for whom the Commonwealth pays all or part of the costs of surety bonds shall be required to participate in the blanket surety bond program adopted by the Division through the Comptroller and the Compensation Board. The Division shall exclude clerks of the circuit court with respect to the moneys they hold pursuant to § 8.01-582 insofar as coverage is provided under § 2.2-1841 for their faithful performance concerning those moneys. Before implementing the program, the Division shall determine that the program will be of less cost to the Commonwealth than the aggregate of individual bonds costs.

C. The blanket surety bonding plan for state employees shall be submitted to the Governor for approval prior to implementation.

D. Employees or officers of a public service authority created under the Virginia Water and Sewer Authorities Act (§ 15.2-5100 et seq.) may participate in the blanket surety bond program adopted by the Division through the Comptroller and the Compensation Board whenever any federal or state agency lends or guarantees funds to a public service authority created under the Virginia Water and Sewer Authorities Act where the funds are utilized in the construction or capitalization of projects authorized under the Act, and there is a condition of the loan or guarantee that those employees or officers of the authority who have access to the funds be bonded. Participation by such employees or officers shall be approved by the governing body of the county or city that created the authority or is a member of the authority, with approval of the Division.

1982, c. 318, § 2.1-526.9; 1984, c. 324; 1988, cc. 841, 848; 1993, c. 939; 1995, c. 5; 2000, cc. 618, 632, § 2.1-191.13; 2001, c. 844.

§ 2.2-1841. Blanket surety bond plan for moneys under control of court

The Division shall establish a program of blanket surety bonding to provide surety for the faithful discharge of duty with respect to moneys held pursuant to §§ 8.01-582 and 8.01-600 by all general receivers and clerks. General receivers and clerks shall participate in the program. The Division's cost of obtaining and administering the blanket surety bond shall be paid from those moneys covered by the bond.

1988, c. 841, § 2.1-526.9:1; 2000, cc. 618, 632, § 2.1-191.14; 2001, c. 844.

§ 2.2-1842. Sovereign immunity

Although the provisions of this article are subject to those of Article 18.1 (§ 8.01-195.1 et seq.) of Chapter 3 of Title 8.01, nothing in this article shall be deemed an additional expressed or implied waiver of the Commonwealth's sovereign immunity.

1982, c. 318, § 2.1-526.11; 2000, cc. 618, 632, § 2.1-191.15; 2001, c. 844.

§ 2.2-1843. Loss prevention

The Division may develop and implement risk management and loss prevention programs related to risk management plans established pursuant to the provisions of this article. The Division may confer with the proper officials or employees of all agencies and institutions of the Commonwealth and of participating entities and persons pursuant to § 2.2-1839, for the purpose of determining risk management and loss prevention programs that shall be carried on with respect to properties and governmental operations under their control and may determine the manner in which the programs may be developed, implemented and enforced. The Division may seek the assistance of risk management consulting companies, insurance companies, loss prevention engineering companies, and their representatives, the State Fire Marshal, and the Division of Engineering and Buildings in devising means by which causes of loss may be reduced or eliminated. The Division shall have the final responsibility with respect to implementation or nonimplementation of a plan by an agency or institution of the Commonwealth and by a participating entity or person pursuant to § 2.2-1839. Information contained in investigative reports of any state or local police department, sheriff's office, fire department or fire marshal relevant to risk management plans established pursuant to the provisions of this article shall be made available to the Division upon request. The relevant information requested shall be furnished within a reasonable time, not to exceed thirty days.

1988, c. 848, § 2.1-526.11:1; 1996, cc. 475, 510; 2000, cc. 618, 632, § 2.1-191.16; 2001, c. 844.

Chapter 19 - DEPARTMENT OF VETERANS' AFFAIRS [Repealed]

§§ 2.2-1900 through 2.2-1905. Repealed

Repealed by Acts 2003, cc. 657 and 670.

Chapter 20 - DEPARTMENT OF VETERANS SERVICES

§ 2.2-2000. Department created; appointment of Commissioner

A. There shall be a Department of Veterans Services (the Department), which shall be headed by a Commissioner appointed by the Governor subject to confirmation by the General Assembly. The Commissioner shall be a veteran who has received an honorable discharge from the armed forces of the United States. He shall report directly to the Governor and shall hold his office at the pleasure of the Governor for a term of five years.

B. The Commissioner of the Department shall, under the direction and control of the Governor, exercise powers and perform duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor.

2003, cc. 657, 670; 2004, c. 697.

§ 2.2-2001. Administrative responsibilities of the Department

A. The Department shall be responsible for the establishment, operation, administration, and maintenance of offices and programs related to services for Virginia-domiciled veterans of the armed forces of the United States and their eligible spouses, orphans, and dependents. Such services shall include, but not be limited to, benefits claims processing and all medical care centers and cemeteries for veterans owned and operated by the Commonwealth.

Subject to the availability of sufficient nongeneral fund revenues, including, but not limited to, private donations and federal funds, the Department shall work in concert with applicable State and Federal agencies to develop and deploy an automated system for the electronic preparation of veterans' disability claims that ensures the collection of the necessary information to expedite processing of Virginia veterans' disability claims. The Department's development and deployment work shall be appropriately phased to minimize risk and shall include an initial replacement of the Department's existing case management technology, which replacement is required to support highly sophisticated electronic claims preparation. The Commissioner shall ensure that the system is efficient and statutorily compliant.

B. From such funds as may be appropriated or otherwise received for such purpose, the Department shall provide burial vaults at cost to eligible veterans and their family members interred at state-operated veterans cemeteries.

C. The Department shall establish guidelines for the determination of eligibility for Virginia-domiciled veterans and their spouses, orphans, and dependents for participation in programs and benefits administered by the Department. Such guidelines shall meet the intent of the federal statutes and regulations pertaining to the administration of federal programs supporting U.S. Armed Forces veterans and their spouses, orphans, and dependents.

D. The Department shall adopt reasonable regulations to implement a program to certify, upon request of the small business owner, that he holds a "service disabled veteran" status.

E. As used in this chapter, unless the context requires otherwise:

"Active military, naval, or air service members" means military service members who perform full-time duty in the armed forces of the United States, or a reserve component thereof, including the National Guard.

"Service-connected" means, with respect to disability that such disability was incurred or aggravated in the line of duty in the active military, naval, or air service.

"Service disabled veteran" means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

"Service disabled veteran business" means a business concern that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited

liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

"Veteran" means an individual who has served in the active military, naval or air service, and who was discharged or released therefrom under conditions other than dishonorable.

2003, cc. 657, 670; 2007, c. 787; 2008, cc. 467, 521, 767, 768; 2009, c. 62; 2010, cc. 84, 554; 2011, cc. 772, 847; 2012, cc. 803, 835; 2013, c. 234.

§ 2.2-2001.1. Program for mental health and rehabilitative services

The Department, in cooperation with the Department of Behavioral Health and Developmental Services and the Department for Aging and Rehabilitative Services, shall establish a program to monitor and coordinate mental health and rehabilitative services support for Virginia veterans and members of the Virginia National Guard and Virginia residents in the Armed Forces Reserves not in active federal service. The program shall also support family members affected by covered military members' service and deployments. The purpose of the program is to ensure that adequate and timely assessment, treatment, and support are available to veterans, service members, and affected family members.

The program shall facilitate support for covered individuals to provide timely assessment and treatment for stress-related injuries and traumatic brain injuries resulting from military service, and subject to the availability of public and private funds appropriated for them, case management services, outpatient, family support, and other appropriate behavioral health and brain injury services necessary to provide individual services and support.

The program shall cooperate with localities that may establish special treatment procedures for veterans and active military service members such as authorized by §§ 9.1-173 and 9.1-174. To facilitate local involvement and flexibility in responding to the problem of crime in local communities and to effectively treat, counsel, rehabilitate, and supervise veterans and active military service members who are offenders or defendants in the criminal justice system and who need access to proper treatment for mental illness including major depression, alcohol or drug abuse, post traumatic stress disorder, traumatic brain injury or a combination of these, any city, county, or combination thereof, may develop, establish, and maintain policies, procedures, and treatment services for all such offenders who are convicted and sentenced for misdemeanors or felonies that are not felony acts of violence, as defined in § 19.2-297.1. Such policies, procedures, and treatment services shall be designed to provide:

1. Coordination of treatment and counseling services available to the criminal justice system case processing;

2. Enhanced public safety through offender supervision, counseling, and treatment;

3. Prompt identification and placement of eligible participants;

4. Access to a continuum of treatment, rehabilitation, and counseling services in collaboration with such care providers as are willing and able to provide the services needed;

5. Where appropriate, verified participant abstinence through frequent alcohol and other drug testing;

6. Prompt response to participants' noncompliance with program requirements;

7. Ongoing monitoring and evaluation of program effectiveness and efficiency;

8. Ongoing education and training in support of program effectiveness and efficiency;

9. Ongoing collaboration among public agencies, community-based organizations and the U.S. Department of Veterans Affairs health care networks, the Veterans Benefits Administration, volunteer veteran mentors, and veterans and military family support organizations; and

10. The creation of a veterans and military service members' advisory council to provide input on the operations of such programs. The council shall include individuals responsible for the criminal justice procedures program along with veterans and, if available, active military service members.

2008, cc. 584, 754; 2009, cc. 813, 840; 2010, c. 58; 2011, cc. 772, 847; 2012, cc. 803, 835.

§ 2.2-2001.2. Programs to reduce unemployment among veterans

A. The Department shall develop a comprehensive program to reduce unemployment among veterans by assisting businesses to attract, hire, train, and retain veterans. Such program shall promote strategies for connecting employers to qualified veterans and include (i) a workforce assessment and training program for participating employers and (ii) a certification process for participating employers with the objective of setting measurable goals for hiring and retaining veterans.

B. All agencies in the executive branch of state government and all public institutions of higher education shall, to the maximum extent possible, be certified in accordance with this section. Such agencies and institutions may request a certification waiver from the Governor if they can demonstrate that (i) the certification is in conflict with the organization's operating directives or (ii) they have in place an alternative program that meets the requirements of this section.

2013, cc. 34, 576; 2015, c. 318.

§ 2.2-2001.3. Virginia War Memorial division

A. The Virginia War Memorial is established as a division within the Department of Veterans Services. The Virginia War Memorial, its grounds, and all its contents, furnishings, funds, endowments, and other property, now owned or hereafter acquired, are and shall remain property of the Commonwealth. The Commissioner shall maintain administrative and financial control of the Virginia War Memorial and its subsidiaries, including adopting regulations for the use of and visitation to the Memorial. Regulations of the Commissioner shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. The mission of the Virginia War Memorial shall be to honor patriotic Virginians who rendered faithful service and sacrifice in the cause of freedom and liberty for the Commonwealth and the nation in time of war, honor all of Virginia's veterans, preserve their history, educate the public, and inspire patriotism in all Virginians.

C. The Department shall, with the advice of the Virginia War Memorial Board, adopt policies governing (i) the programs and activities that may and should be carried out at the Memorial, (ii) the use of and visitation to the Memorial, and (iii) fees for the use of the Memorial.

D. The names and homes of record designation of all Virginians "Missing in Action" as a result of the Vietnam War and all Virginians "Killed in Action" (i) as a result of military operations against terrorism, (ii) as a result of a terrorist act, or (iii) in any armed conflict after December 6, 1941, shall be placed on the Virginia War Memorial after July 1, 2018. In the case of a Virginian "Killed in Action, " the name and home of record designation shall be placed on the Virginia War Memorial within one year of the date of confirmed death.

E. To preserve the dignity of military medals authorized by the U.S. Department of Defense and the memory of those who have rendered faithful service and sacrifice in the cause of freedom and liberty, the Virginia War Memorial division of the Department shall be vested with the full authority to take possession of military medals, ribbons, or certificates that come into the possession of the Commonwealth for which the ownership is unknown until such time as the true owner is able to take possession. The Virginia War Memorial division of the Department shall make reasonable efforts, based on available resources, to determine the rightful owner and return any military medal, ribbon, or certificate that comes into its possession pursuant to this section.

F. The Commissioner shall provide supervision of the Virginia War Memorial Education Foundation and any other nonprofit corporation established as an instrumentality to provide fundraising for the Memorial and assist in the details of administering the affairs of the Memorial.

2013, c. 234; 2016, c. 690.

§ 2.2-2001.4. Military medical personnel; pilot program

A. For the purposes of this section, "military medical personnel" means an individual who has recently served as a medic in the United States Army, medical technician in the United States Air Force, or corpsman in the United States Navy or the United States Coast Guard and who was discharged or released from such service under conditions other than dishonorable.

B. The Department, in collaboration with the Department of Health Professions, shall establish a pilot program in which military medical personnel may practice and perform certain delegated acts that constitute the practice of medicine under the supervision of a physician or podiatrist who holds an active, unrestricted license in Virginia. Such activities shall reflect the level of training and experience of the military medical personnel. The supervising physician or podiatrist shall retain responsibility for the care of the patient.

C. Any licensed physician or podiatrist, a professional corporation or partnership of any licensee, any hospital, or any commercial enterprise having medical facilities for its employees that are supervised by one or more physicians or podiatrists may participate in such pilot program.

D. The Department shall establish general requirements for participating military medical personnel, licensees, and employers.

2016, cc. 212, 418.

§ 2.2-2002. Department offices

The Commissioner shall maintain an office in the vicinity of the State Capitol in Richmond. He may maintain service offices in the Commonwealth in whatever locations he determines to be necessary to carry out the provisions of this chapter. The Commissioner shall ensure that benefit claims assistance is provided on a regular basis at locations other than established service offices.

2003, cc. 657, 670; 2005, c. 888; 2009, c. 136.

§ 2.2-2002.1. Department personnel

The Commissioner shall appoint the personnel assigned to each service office and determine the compensation to be paid to such personnel. The number of employees assigned to the processing of benefit claims shall be sufficient to maintain a ratio of one staff person for every 23,000 veterans residing in the Commonwealth.

2005, c. 888; 2009, c. 136; 2011, cc. 330, 358; 2012, cc. 331, 342.

§ 2.2-2003. General powers of Commissioner

The Commissioner shall have the following general powers to carry out the purposes of this chapter:

1. Employ required personnel;

2. Enter into all contracts and agreements necessary or incidental to the performance of the Department's duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, and agencies and governmental subdivisions of the Commonwealth;

3. Accept grants from the United States government and its agencies and instrumentalities and any other source. To these ends, the Department shall have the power to comply with conditions and execute agreements necessary, convenient, or desirable; and

4. Do all acts necessary or convenient to carry out the purposes of this chapter.

2003, cc. 657, 670.

§ 2.2-2004. Additional powers and duties of Commissioner

The Commissioner shall have the following powers and duties related to veterans services:

1. Perform cost-benefit and value analysis of (i) existing programs and services and (ii) new programs and services before establishing and implementing them;

2. Seek alternative funding sources for the Department's veterans service programs;

3. Cooperate with all relevant entities of the federal government, including, but not limited to, the United States Department of Veterans Affairs, the United States Department of Housing and Urban Development, and the United States Department of Labor in matters concerning veterans benefits and services;

4. Appoint a full-time coordinator to collaborate with the Joint Leadership Council of Veterans Service Organizations created in § 2.2-2681 on ways to provide both direct and indirect support of ongoing veterans programs, and to determine and address future veterans needs and concerns;

5. Initiate, conduct, and issue special studies on matters pertaining to veterans needs and priorities, as determined necessary by the Commissioner;

6. Evaluate veterans service efforts, practices, and programs of the agencies, political subdivisions or other entities and organizations of the government of the Commonwealth and make recommendations to the Secretary of Veterans and Defense Affairs, the Governor, and the General Assembly on ways to increase awareness of the services available to veterans or improve veterans services;

7. Assist entities of state government and political subdivisions of the Commonwealth in enhancing their efforts to provide services to veterans, those members of the Virginia National Guard, Virginia residents in the Armed Forces Reserves who qualify for veteran status, and their immediate family members, including the dissemination of relevant materials and the rendering of technical or other advice;

8. Assist counties, cities, and towns of the Commonwealth in the development, implementation, and review of local veterans services programs as part of the state program and establish as necessary, in consultation with the Board of Veterans Services and the Joint Leadership Council of Veterans Service Organizations, volunteer local and regional advisory committees to assist and support veterans service efforts;

9. Review the activities, roles, and contributions of various entities and organizations to the Commonwealth's veterans services programs and report on or before December 1 of each year in writing to the Governor and General Assembly on the status, progress, and prospects of veterans services in the Commonwealth, including performance measures and outcomes of veterans services programs;

10. Recommend to the Secretary of Veterans and Defense Affairs, the Governor, and the General Assembly any corrective measures, policies, procedures, plans, and programs to make service to Virginia-domiciled veterans and their eligible spouses, orphans, and dependents as efficient and effective as practicable;

11. Design, implement, administer, and review special programs or projects needed to promote veterans services in the Commonwealth;

12. Integrate veterans services activities into the framework of economic development activities in general;

13. Manage operational funds using accepted accounting principles and practices in order to provide for a sum sufficient to ensure continued, uninterrupted operations;

14. Engage Department personnel in training and educational activities aimed at enhancing veterans services;

15. Develop a strategic plan to ensure efficient and effective utilization of resources, programs, and services;

16. (Effective until October 1, 2016) Certify eligibility for the Virginia Military Survivors and Dependents Education Program and perform other duties related to such Program as outlined in § 23-7.4:1; and

16. (Effective October 1, 2016) Certify eligibility for the Virginia Military Survivors and Dependents Education Program and perform other duties related to such Program as outlined in § 23.1-608; and

17. Establish and implement a compact with Virginia's veterans, which shall have a goal of making Virginia America's most veteran-friendly state. The compact shall be established in conjunction with the Board of Veterans Services and supported by the Joint Leadership Council of Veterans Service Organizations and shall (i) include specific provisions for technology advances, workforce development, outreach, quality of life enhancement, and other services for veterans and (ii) provide service standards and goals to be attained for each specific provision in clause (i). The provisions of the compact shall be reviewed and updated annually. The Commissioner shall include in the annual report required by this section the progress of veterans services established in the compact.

2003, cc. 657, 670; 2008, cc. 467, 768; 2010, c. 534; 2011, cc. 780, 858; 2012, cc. 803, 835; 2013, c. 234; 2014, cc. 115, 490.

§ 2.2-2004.1. Repealed

Repealed by Acts 2011, cc. 89 and 147, cl. 2.

Chapter 20.1 - VIRGINIA INFORMATION TECHNOLOGIES AGENCY

Article 1 - GENERAL PROVISIONS

§ 2.2-2005. Creation of Agency; appointment of Chief Information Officer

A. There is hereby created the Virginia Information Technologies Agency (VITA), which shall serve as the agency responsible for administration and enforcement of the provisions of this Chapter.

B. The Governor shall appoint a Chief Information Officer of the Commonwealth (the CIO) to oversee the operation of VITA. The CIO shall exercise the powers and perform the duties conferred or

imposed upon him by law and perform such other duties as may be required by the Governor and the Secretary of Technology.

2003, cc. 981, 1021; 2009, c. 826; 2010, cc. 136, 145; 2016, c. 296.

§ 2.2-2006. Definitions

As used in this chapter, unless the context requires a different meaning:

"Commonwealth information technology project" means any state agency information technology project that is under Commonwealth governance and oversight.

"Commonwealth Project Management Standard" means a document developed and adopted by the Chief Information Officer (CIO) pursuant to § 2.2-2016.1 that describes the methodology for conducting information technology projects, and the governance and oversight used to ensure project success.

"Confidential data" means information made confidential by federal or state law that is maintained in an electronic format.

"Enterprise" means an organization with common or unifying business interests. An enterprise may be defined at the Commonwealth level or secretariat level for program and project integration within the Commonwealth, secretariats, or multiple agencies.

(Effective until October 1, 2016) "Executive branch agency" or "agency" means any agency, institution, board, bureau, commission, council, public institution of higher education, or instrumentality of state government in the executive department listed in the appropriation act. However, "executive branch agency" or "agency" does not include the University of Virginia Medical Center, a public institution of higher education to the extent exempt from this chapter pursuant to the Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.) or other law, or the Virginia Port Authority.

(Effective October 1, 2016) "Executive branch agency" or "agency" means any agency, institution, board, bureau, commission, council, public institution of higher education, or instrumentality of state government in the executive department listed in the appropriation act. However, "executive branch agency" or "agency" does not include the University of Virginia Medical Center, a public institution of higher education to the extent exempt from this chapter pursuant to the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.) or other law, or the Virginia Port Authority.

"Information technology" means communications, telecommunications, automated data processing, applications, databases, data networks, the Internet, management information systems, and related information, equipment, goods, and services. The provisions of this chapter shall not be construed to hamper the pursuit of the missions of the institutions in instruction and research.

"ITAC" means the Information Technology Advisory Council created in § 2.2-2699.5.

"Major information technology project" means any Commonwealth information technology project that has a total estimated cost of more than $1 million or that has been designated a major information technology project by the CIO pursuant to the Commonwealth Project Management Standard developed under § 2.2-2016.1.

"Secretary" means the Secretary of Technology.

"Technology asset" means hardware and communications equipment not classified as traditional mainframe-based items, including personal computers, mobile computers, and other devices capable of storing and manipulating electronic data.

"Telecommunications" means any origination, transmission, emission, or reception of data, signs, signals, writings, images, and sounds or intelligence of any nature, by wire, radio, television, optical, or other electromagnetic systems.

1984, c. 746, § 2.1-563.13; 1997, c. 858; 2001, c. 844, § 2.2-1301; 2003, cc. 981, 1021; 2004, c. 145; 2007, c. 769; 2010, cc. 136, 145; 2011, c. 739; 2012, cc. 803, 835; 2014, cc. 37, 181; 2015, c. 768; 2016, c. 296.

§ 2.2-2007. Powers of the CIO

A. The CIO shall promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter. The CIO shall also develop policies, standards, and guidelines for the planning, budgeting, procurement, development, maintenance, security, and operations of information technology for executive branch agencies. Such policies, standards, and guidelines shall include those necessary to:

1. Support state and local government exchange, acquisition, storage, use, sharing, and distribution of data and related technologies.

2. Support the development of electronic transactions including the use of electronic signatures as provided in § 59.1-496.

3. Support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the Commonwealth receive the greatest possible security, value, and convenience from investments made in technology.

4. Ensure that the costs of information technology systems, products, data, and services are contained through the shared use of existing or planned equipment, data, or services.

5. Provide for the effective management of information technology investments through their entire life cycles, including identification, business case development, selection, procurement, implementation, operation, performance evaluation, and enhancement or retirement. Such policies, standards, and guidelines shall include, at a minimum, the periodic review by the CIO of agency Commonwealth information technology projects.

6. Establish an Information Technology Investment Management Standard based on acceptable technology investment methods to ensure that all executive branch agency technology expenditures are an integral part of the Commonwealth's performance management system, produce value for the agency and the Commonwealth, and are aligned with (i) agency strategic plans, (ii) the Governor's policy objectives, and (iii) the long-term objectives of the Council on Virginia's Future.

B. In addition to other such duties as the Secretary may assign, the CIO shall:

1. Oversee and administer the Virginia Technology Infrastructure Fund created pursuant to § 2.2-2023.

2. Report annually to the Governor, the Secretary, and the Joint Commission on Technology and Science created pursuant to § 30-85 on the use and application of information technology by executive branch agencies to increase economic efficiency, citizen convenience, and public access to state government.

3. Prepare annually a report for submission to the Secretary, the Information Technology Advisory Council, and the Joint Commission on Technology and Science on a prioritized list of Recommended Technology Investment Projects (RTIP Report) based upon major information technology projects submitted for business case approval pursuant to this chapter. As part of the RTIP Report, the CIO shall develop and regularly update a methodology for prioritizing projects based upon the allocation of points to defined criteria. The criteria and their definitions shall be presented in the RTIP Report. For each project recommended for funding in the RTIP Report, the CIO shall indicate the number of points and how they were awarded. For each listed project, the CIO shall also report (i) all projected costs of ongoing operations and maintenance activities of the project for the next three biennia following project implementation; (ii) a justification and description for each project baseline change; and (iii) whether the project fails to incorporate existing standards for the maintenance, exchange, and security of data. This report shall also include trends in current projected information technology spending by executive branch agencies and secretariats, including spending on projects, operations and maintenance, and payments to VITA. Agencies shall provide all project and cost information required to complete the RTIP Report to the CIO prior to May 31 immediately preceding any budget biennium in which the project appears in the Governor's budget bill.

4. Provide oversight for executive branch agency efforts to modernize the planning, development, implementation, improvement, operations and maintenance, and retirement of Commonwealth information technology, including oversight for the selection, development and management of enterprise information technology.

5. Develop statewide technical and data standards and specifications for information technology and related systems, including (i) the efficient exchange of electronic information and technology, including infrastructure, between the public and private sectors in the Commonwealth and (ii) the

utilization of nationally recognized technical and data standards for health information technology systems or software purchased by an executive branch agency.

6. Direct the compilation and maintenance of an inventory of information technology, including but not limited to personnel, facilities, equipment, goods, and contracts for services.

7. Provide for the centralized marketing, provision, leasing, and executing of licensing agreements for electronic access to public information and government services through the Internet, wireless devices, personal digital assistants, kiosks, or other such related media on terms and conditions as may be determined to be in the best interest of the Commonwealth. VITA may fix and collect fees and charges for (i) public information, media, and other incidental services furnished by it to any private individual or entity, notwithstanding the charges set forth in § 2.2-3704, and (ii) such use and services it provides to any executive branch agency or local government. Nothing in this subdivision authorizing VITA to fix and collect fees for providing information services shall be construed to prevent access to the public records of any public body pursuant to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). VITA is authorized, subject to the approval by the Secretary of Technology and any other affected Secretariat, to delegate the powers and responsibilities granted in this subdivision to any agency within the executive branch.

8. Periodically evaluate the feasibility of outsourcing information technology resources and services, and outsource those resources and services that are feasible and beneficial to the Commonwealth.

9. Have the authority to enter into and amend contracts, including contracts with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia, for the provision of information technology services.

C. Consistent with § 2.2-2012, the CIO may enter into public-private partnership contracts to finance or implement information technology programs and projects. The CIO may issue a request for information to seek out potential private partners interested in providing programs or projects pursuant to an agreement under this subsection. The compensation for such services shall be computed with reference to and paid from the increased revenue or cost savings attributable to the successful implementation of the program or project for the period specified in the contract. The CIO shall be responsible for reviewing and approving the programs and projects and the terms of contracts for same under this subsection. The CIO shall determine annually the total amount of increased revenue or cost savings attributable to the successful implementation of a program or project under this subsection and such amount shall be deposited in the Virginia Technology Infrastructure Fund created in § 2.2-2023. The CIO is authorized to use moneys deposited in the Fund to pay private partners pursuant to the terms of contracts under this subsection. All moneys in excess of that required to be paid to private partners, as determined by the CIO, shall be reported to the Comptroller and retained in the Fund. The CIO shall prepare an annual report to the

Governor, the Secretary, and General Assembly on all contracts under this subsection, describing each information technology program or project, its progress, revenue impact, and such other information as may be relevant.

D. Executive branch agencies shall cooperate with VITA in identifying the development and operational requirements of proposed information technology systems, products, data, and services, including the proposed use, functionality, and capacity, and the total cost of acquisition, operation, and maintenance.

1999, cc. 412, 421, 433, § 2.1-51.47; 2000, c. 995; 2001, c. 844, § 2.2-226; 2002, c. 424; 2003, cc. 981, 1021; 2005, cc. 933, 945; 2007, cc. 276, 701; 2009, c. 86; 2010, cc. 136, 145; 2011, c. 739; 2015, c. 768; 2016, c. 296.

§ 2.2-2007.1. Additional duties of the CIO relating to information technology planning and budgeting

A. The CIO shall have the following duties related to information technology planning:

1. Monitor trends and advances in information technology, plan and forecast future needs for information technology, and conduct studies and surveys of organizational structures and best management practices of information technology systems and procedures;

2. Evaluate the needs of executive branch agencies in the Commonwealth with regard to (i) a consistent, reliable, and secure information technology infrastructure; (ii) existing capabilities related to building and supporting that infrastructure; and (iii) recommendation of approaches to ensure the future development, maintenance, and financing of information technology infrastructure befitting the needs of executive branch agencies and the service level requirements of its citizens; and

3. Develop a comprehensive six-year Commonwealth strategic plan for information technology to include (i) specific projects that implement the plan; (ii) a plan for the acquisition, management, and use of information technology by executive branch agencies; (iii) a report of the progress of any ongoing enterprise information technology projects, any factors or risks that might affect their successful completion, and any changes to their projected implementation costs and schedules; and (iv) a report on the progress made by executive branch agencies toward accomplishing the Commonwealth strategic plan for information technology. The Commonwealth strategic plan for information technology shall be updated annually and submitted to the Secretary for approval.

B. The CIO shall have the following duties related to budgeting for information technology projects:

1. Develop policies, standards, and guidelines, in consultation with the Department of Planning and Budget, that are integrated into the Commonwealth's strategic planning and budgeting processes, and that executive branch agencies shall follow in developing information technology plans and technology-related budget requests. Such policies and procedures shall require

consideration of the contribution of current and proposed technology expenditures to the support of executive branch agency priority functional activities, as well as current and future operating expenses, and shall be utilized by all state agencies in preparing budget requests.

2. Assist executive branch agencies in the development of information technology strategic plans pursuant to § 2.2-2014 and the preparation of budget requests for information technology that are consistent with the policies, standards, and guidelines developed pursuant to this section.

3. (Effective until October 1, 2016) Review budget requests for information technology from executive branch agencies and recommend budget priorities to the Secretary. Review of such budget requests shall include all information technology projects for amounts exceeding $250,000 for which the contract or proposed contract would, as a means of payment for the project, require the Commonwealth to forgo certain revenue collections or would allow another party to collect fees, charges, or other revenues on behalf of the Commonwealth. For each information technology project, the agency shall provide the CIO (i) a summary of the terms, (ii) the anticipated duration, and (iii) the cost or charges to any user, whether a state agency or other party not directly a party to the project arrangements. The description shall also include any terms or conditions that bind the Commonwealth or restrict the Commonwealth's operations and the methods of procurement employed to reach such terms. Executive branch agencies and institutions shall submit to the CIO a projected biennial operations and maintenance budget for technology assets owned or licensed by the agency or institution and submit a budget decision package for any shortfalls. The provisions of this subdivision shall not apply to public institutions of higher education that meet the conditions prescribed in subsection B of § 23-38.88.

3. Review budget requests for information technology from executive branch agencies and recommend budget priorities to the Secretary. Review of such budget requests shall include all information technology projects for amounts exceeding $250,000 for which the contract or proposed contract would, as a means of payment for the project, require the Commonwealth to forgo certain revenue collections or would allow another party to collect fees, charges, or other revenues on behalf of the Commonwealth. For each information technology project, the agency shall provide the CIO (i) a summary of the terms, (ii) the anticipated duration, and (iii) the cost or charges to any user, whether a state agency or other party not directly a party to the project arrangements. The description shall also include any terms or conditions that bind the Commonwealth or restrict the Commonwealth's operations and the methods of procurement employed to reach such terms. Executive branch agencies and institutions shall submit to the CIO a projected biennial operations and maintenance budget for technology assets owned or licensed by the agency or institution and submit a budget decision package for any shortfalls. The provisions of this subdivision shall not apply to public institutions of higher education that meet the conditions prescribed in subsection A of § 23.1-1002.

2016, c. 296.

§ 2.2-2008. Repealed

Repealed by Acts 2016, c. 296, cl. 2.

§ 2.2-2009. Additional duties of the CIO relating to security of government information

A. To provide for the security of state government electronic information from unauthorized uses, intrusions or other security threats, the CIO shall direct the development of policies, standards, and guidelines for assessing security risks, determining the appropriate security measures and performing security audits of government electronic information. Such policies, standards, and guidelines shall apply to the Commonwealth's executive, legislative, and judicial branches and independent agencies. The CIO shall work with representatives of the Chief Justice of the Supreme Court and Joint Rules Committee of the General Assembly to identify their needs. Such policies, standards, and guidelines shall, at a minimum:

1. Address the scope and frequency of security audits. In developing and updating such policies, standards, and guidelines, the CIO shall designate a government entity to oversee, plan, and coordinate the conduct of periodic security audits of all executive branch agencies and independent agencies. The CIO shall coordinate these audits with the Auditor of Public Accounts and the Joint Legislative Audit and Review Commission. The Chief Justice of the Supreme Court and the Joint Rules Committee of the General Assembly shall determine the most appropriate methods to review the protection of electronic information within their branches;

2. Control unauthorized uses, intrusions, or other security threats;

3. Provide for the protection of confidential data maintained by state agencies against unauthorized access and use in order to ensure the security and privacy of citizens of the Commonwealth in their interaction with state government. Such policies, standards, and guidelines shall include requirements that (i) any state employee or other authorized user of a state technology asset provide passwords or other means of authentication to use a technology asset and access a state-owned or state-operated computer network or database and (ii) a digital rights management system or other means of authenticating and controlling an individual's ability to access electronic records be utilized to limit access to and use of electronic records that contain confidential information to authorized individuals;

4. Address the creation and operation of a risk management program designed to identify information technology security gaps and develop plans to mitigate the gaps. All agencies in the Commonwealth shall cooperate with the CIO, including (i) providing the CIO with information required to create and implement a Commonwealth risk management program, (ii) creating an agency risk management program, and (iii) complying with all other risk management activities.

B.1. The CIO shall annually report to the Governor, the Secretary, and General Assembly on the results of security audits, the extent to which security policy, standards, and guidelines have been adopted by executive branch and independent agencies, and a list of those executive branch agencies and independent agencies that have not implemented acceptable security and risk management regulations, policies, standards, and guidelines to control unauthorized uses, intrusions,

or other security threats. For any executive branch agency or independent agency whose security audit results and plans for corrective action are unacceptable, the CIO shall report such results to (i) the Secretary, (ii) any other affected cabinet secretary, (iii) the Governor, and (iv) the Auditor of Public Accounts. Upon review of the security audit results in question, the CIO may take action to suspend the executive branch agency's or independent agency's information technology projects pursuant to subsection B of § 2.2-2016.1, limit additional information technology investments pending acceptable corrective actions, and recommend to the Governor and Secretary any other appropriate actions.

2. Executive branch agencies and independent agencies subject to such audits as required by this section shall fully cooperate with the entity designated to perform such audits and bear any associated costs. Public bodies that are not required to but elect to use the entity designated to perform such audits shall also bear any associated costs.

C. The provisions of this section shall not infringe upon responsibilities assigned to the Comptroller, the Auditor of Public Accounts, or the Joint Legislative Audit and Review Commission by other provisions of the Code of Virginia.

D. The CIO shall promptly receive reports from directors of departments in the executive branch of state government made in accordance with § 2.2-603 and shall take such actions as are necessary, convenient or desirable to ensure the security of the Commonwealth's electronic information and confidential data.

E. The CIO shall provide technical guidance to the Department of General Services in the development of policies, standards, and guidelines for the recycling and disposal of computers and other technology assets. Such policies, standards, and guidelines shall include the expunging, in a manner as determined by the CIO, of all confidential data and personal identifying information of citizens of the Commonwealth prior to such sale, disposal, or other transfer of computers or other technology assets.

F. The CIO shall provide all directors of agencies and departments with all such information, guidance, and assistance required to ensure that agencies and departments understand and adhere to the policies, standards, and guidelines developed pursuant to this section.

2000, c. 961, §§ 2.1-563.42 - 2.1-563.44; 2001, c. 844, §§ 2.2-136 - 2.2-138; 2002, c. 247, § 2.2-226.1; 2003, cc. 981, 1021; 2004, c. 638; 2007, cc. 769, 775; 2010, cc. 136, 145; 2015, c. 768; 2016, c. 296.

§ 2.2-2010. Repealed

Repealed by Acts 2016, c. 296, cl. 2.

§ 2.2-2011. Additional powers and duties relating to development, management, and operation of information technology

A. Unless specifically exempted by law, VITA shall be responsible for the development, operation, and management of information technology for every executive branch agency, pursuant to the provisions of this chapter.

B. The CIO shall have the following powers and duties concerning the development, operation, and management of information technology:

1. Manage, coordinate, and provide the information technology used by executive branch agencies;

2. Acquire, lease, or construct such land, facilities, and equipment as necessary to deliver comprehensive information technology services, and to maintain such land, facilities, and equipment owned or leased; and

3. Provide technical assistance to executive branch agencies in the planning, development, operation, and management of information technology.

1984, c. 746, §§ 2.1-563.16, 2.1-563.17, 2.1-563.18; 1985, c. 265; 1995, c. 357; 1997, c. 858; 1999, cc. 412, 421, 433; 2001, c. 844, § 2.2-1303; 2002, c. 579; 2003, cc. 981, 1021; 2016, c. 296.

§ 2.2-2012. Additional powers and duties related to the procurement of information technology

A. The CIO shall develop policies, standards, and guidelines for the procurement of information technology of every description.

B.1. Information technology shall be procured by (i) VITA for its own benefit or on behalf of other executive branch agencies or (ii) such other agencies to the extent authorized by VITA. Such procurements shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.), regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended, and any regulations, policies, procedures, standards, and guidelines of VITA. In no case shall such procurements exceed the requirements of the regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973, as amended.

2. The CIO shall review, and approve or disapprove, all executive branch agency procurements of information technology, including approval of all agreements and contracts prior to the execution of the procurement. The CIO may exempt from review requirements, but not from the Commonwealth's competitive procurement process, any executive branch agency that establishes, to the satisfaction of the CIO, (i) its ability and willingness to administer efficiently and effectively the procurement of information technology or (ii) that it has been subjected to another review process coordinated through or approved by the CIO.

3. The CIO shall develop and administer a system to monitor and evaluate executed information technology contracts and billing and collection systems.

The CIO shall disapprove any procurement that does not conform to the Commonwealth strategic plan for information technology developed and approved pursuant to subdivision A 3 of § 2.2-

2007.1 or to the individual strategic plans of executive branch agencies developed and approved pursuant to § 2.2-2014.

4. The CIO shall require that before any executive branch agency procures any computer system, equipment, or software, it shall consider whether the proposed system, equipment, or software is capable of producing products that facilitate the rights of the public to access public records under the Freedom of Information Act (§ 2.2-3700 et seq.) or other applicable law.

C. All statewide contracts and agreements made and entered into by VITA for the purchase of information technology shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. Counties, cities, and towns and local school divisions are authorized to purchase information technology goods and services of every description from VITA and its vendors, provided that such purchases are not prohibited by the terms of contracts for such goods and services. Notwithstanding the provisions of § 2.2-4302.1, 2.2-4302.2, 2.2-4303.1, or 2.2-4303.2, VITA may enter into multiple vendor contracts for the referenced services, facilities, and goods and services.

D. VITA may establish contracts for the purchase of personal computers and related devices by licensed teachers employed in a full-time teaching capacity in Virginia public schools or in state educational facilities for use outside the classroom. The computers and related devices shall not be purchased with public funds, but shall be paid for and owned by teachers individually provided that no more than one such computer and related device per year shall be so purchased.

E. If VITA, or any executive branch agency authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § 2.2-4301, may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

F. VITA shall allow private institutions of higher education that are (i)(a) chartered in Virginia or (b) chartered by an Act of Congress in 1821 and that have owned and operated since 1991 a campus with a significant presence in the Commonwealth and (ii) granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code to purchase directly from contracts established for state agencies and public bodies by VITA.

G. This section shall not be construed or applied so as to infringe upon, in any manner, the responsibilities for accounting systems assigned to the Comptroller under § 2.2-803.

H. The Comptroller shall not issue any warrant upon any voucher issued by an executive branch agency covering the purchase of any information technology when such purchases are made in

violation of any provision of this chapter or the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

I. Intentional violations of centralized purchasing requirements for information technology pursuant to this chapter by an executive branch agency, continued after notice from the Governor to desist, shall constitute malfeasance in office and shall subject the officer responsible for the violation to suspension or removal from office, as may be provided in law in other cases of malfeasance.

1984, c. 746, §§ 2.1-563.16, 2.1-563.17, 2.1-563.18; 1985, c. 265; 1995, c. 357; 1997, c. 858; 1999, cc. 412, 421, 433; 2001, c. 844, § 2.2-1303; 2002, c. 579; 2003, cc. 352, 895, 981, 1021; 2004, cc. 237, 278; 2007, c. 630; 2010, cc. 136, 145; 2011, c. 739; 2012, cc. 803, 835; 2013, c. 583; 2014, cc. 36, 180; 2015, cc. 462, 760, 768, 776; 2016, c. 296.

§ 2.2-2013. Internal service and special funds

A. There is established the Information Technology and Management Internal Service Fund to be administered by VITA.

B. There is established the Acquisition Services Special Fund to be administered by VITA and used to finance procurement and contracting activities and programs unallowable for federal fund reimbursement.

C. Upon written request of the CIO, the Joint Legislative Audit and Review Commission may direct the Comptroller to establish internal service fund accounts on his books and record the receipts and expenditures for appropriate functions of VITA. Charges for services rendered sufficient to offset costs involved in these operations shall be established.

D. All users of services provided for in this chapter administered by VITA shall be assessed a surcharge, which shall be deposited in the appropriate fund. This charge shall be an amount sufficient to allow VITA to finance the operations and staff of the services offered.

E. Additional moneys necessary to establish these funds or provide for the administration of the activities of VITA may be advanced from the general account of the state treasury.

F. The CIO shall direct that the following activities be conducted with respect to VITA's internal service funds:

1. VITA shall establish fee schedules for the collection of fees from users when general fund appropriations are not available for the services rendered.

2. VITA shall develop and implement information, billing, and collections methods that will assist state agencies in analyzing and effectively managing their use of VITA's services, and which will allow VITA to forecast service demands and balances of its internal service funds.

3. By September 1 of each year, VITA shall submit biennial projections of future revenues and expenditures for each internal service fund and estimates of any anticipated changes to fee

schedules to the Joint Legislative Audit and Review Commission and the Department of Planning and Budget.

4. In the event that changes to fee schedules or rates are required, the CIO shall submit documentation to the Joint Legislative Audit and Review Commission and the Department of Planning and Budget no later than September 1 prior to the fiscal year in which the new or revised rates are to take effect so that the impact of the rate changes can be considered for inclusion in the executive budget submitted to the General Assembly pursuant to § 2.2-1508. In emergency circumstances, deviations from this approach shall be approved in advance by the Joint Legislative Audit and Review Commission.

1984, c. 746, §§ 2.1-563.19, 2.1-563.20, 2.1-563.21, 2.1-563.22; 2001, c. 844, § 2.2-1304; 2003, cc. 981, 1021; 2010, cc. 136, 145; 2012, cc. 55, 285; 2016, c. 296.

§ 2.2-2014. Submission of information technology plans by state agencies and public institutions of higher education; designation of technology resource

A. All executive branch agencies shall prepare and submit information technology strategic plans to the CIO for review and approval. All executive branch agencies shall maintain current information technology plans that have been approved by the CIO.

B. The head of each executive branch agency shall designate an existing employee to be the agency's information technology resource who shall be responsible for compliance with the policies, standards, and guidelines established by the CIO.

1999, cc. 412, 421, 433, § 2.1-51.47; 2000, c. 995; 2001, c. 844, § 2.2-226; 2002, c. 424; 2003, cc. 981, 1021; 2016, c. 296.

§ 2.2-2015. Repealed

Repealed by Acts 2016, c. 296, cl. 2.

Article 2 - DIVISION OF PROJECT MANAGEMENT

§ 2.2-2016. Division of Project Management established

There is established within VITA a Division of Project Management (the Division). The CIO and the Division shall exercise the powers and duties conferred in this article.

2003, cc. 981, 1021; 2016, c. 296.

§ 2.2-2016.1. Additional powers and duties of the CIO relating to project management

A. The CIO shall have the following duties related to the management of information technology projects:

1. Develop policies, standards, and guidelines that require the Division to review and recommend to the CIO Commonwealth information technology projects proposed by executive branch agencies. Such policies, standards, and guidelines shall include in the review an assessment of the (i) degree to which the project is consistent with the Commonwealth's overall strategic plan; (ii)

technical feasibility of the project; (iii) benefits to the Commonwealth of the project, including customer service improvements; (iv) risks associated with the project; (v) continued funding requirements; and (vi) past performance by the executive branch agency on other projects.

2. Develop a Commonwealth Project Management Standard for information technology projects by executive branch agencies that establishes a methodology for the initiation, planning, execution, and closeout of information technology projects and related procurements. Such methodology shall include the establishment of appropriate oversight for information technology projects. The basis for the governance and oversight of information technology projects shall include, but not be limited to, an assessment of the project's risk and complexity. The Commonwealth Project Management Standard shall require that all such projects conform to the Commonwealth strategic plan for information technology developed and approved pursuant to subdivision A 3 of § 2.2-2007.1 and the strategic plans of agencies developed and approved pursuant to § 2.2-2014. All executive branch agencies shall conform to the requirements of the Commonwealth Project Management Standard.

3. Establish minimum qualifications and training standards for project managers.

4. Establish an information clearinghouse that identifies best practices and new developments and contains detailed information regarding the Commonwealth's previous experiences with the development of major information technology projects.

5. Review and approve or disapprove the selection or termination of any Commonwealth information technology project. The CIO shall disapprove any executive branch agency request to initiate a major information technology project or related procurement if funding for such project has not been included in the budget bill in accordance with § 2.2-1509.3, unless the Governor has determined that an emergency exists and a major information technology project is necessary to address the emergency. The CIO shall disapprove any Commonwealth information technology projects that do not conform to the Commonwealth strategic plan for information technology developed and approved pursuant to subdivision A 3 of § 2.2-2007.1 or to the strategic plan of executive branch agencies developed and approved pursuant to § 2.2-2014.

6. Establish Internal Agency Oversight Committees and Secretariat Oversight Committees as necessary and in accordance with § 2.2-2021.

B. The CIO may direct the modification, termination, or suspension of any Commonwealth information technology project that, as the result of a periodic review authorized by subdivision A 5 of § 2.2-2007, has not met the performance measures agreed to by the CIO and sponsoring executive branch agency, or if he otherwise deems such action appropriate and consistent with the terms of any affected contracts.

Nothing in this subsection shall be construed to supersede the responsibility of a board of visitors for the management and operation of a public institution of higher education.

The provisions of this subsection shall not apply to research projects, research initiatives, or instructional programs at public institutions of higher education. However, technology investments in research projects, research initiatives, or instructional programs at such institutions estimated to cost $1 million or more of general fund appropriations may be reviewed as provided in subdivision A 5 of § 2.2-2007. The CIO and the Secretary of Education, in consultation with public institutions of higher education, shall develop and provide to such institution criteria to be used in determining whether projects are mission-critical.

2016, c. 296.

§ 2.2-2017. Powers and duties of the Division

The Division shall have the power and duty to:

1. Implement the approval process for information technology projects developed in accordance with the Commonwealth Project Management Standard;

2. Assist the CIO in the development and implementation of project management policies, standards, and guidelines to be used for information technology projects in accordance with this article;

3. Provide ongoing assistance and support to executive branch agencies in the development of information technology projects;

4. Establish a program providing cost-effective training to executive branch agency project managers;

5. Review information management and information technology plans submitted by executive branch agencies and recommend to the CIO the approval of such plans and any amendments thereto;

6. Monitor the implementation of information management and information technology plans and periodically report its findings to the CIO;

7. Review and recommend to the CIO information technology projects based on the policies, standards, and guidelines developed pursuant to § 2.2-2016.1;

8. Provide oversight for executive branch agency information technology projects; and

9. Report on a quarterly basis to the CIO, the Secretary, the Governor, the Information Technology Advisory Council, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, the House Appropriations Committee, the Senate Finance Committee, and the Joint Commission on Technology and Science the status and performance of each major information technology project and related procurement conducted by any executive branch agency.

2003, cc. 981, 1021; 2011, c. 739; 2015, c. 768; 2016, c. 296.

§ 2.2-2018. Repealed

Repealed by Acts 2011, c. 739, cl. 2.

§ 2.2-2018.1. Project and procurement investment business case approval

A. Executive branch agencies shall obtain CIO approval prior to the initiation of any Commonwealth information technology project or procurement. When selecting an information technology investment, executive branch agencies and public institutions of higher education shall submit to the Division an investment business case, outlining the business value of the investment, the proposed technology solution, if known, and an explanation of how the project will support the agency strategic plan, the agency's secretariat's strategic plan, and the Commonwealth strategic plan for information technology developed and approved pursuant to subdivision A 3 of § 2.2-2007.1. The Division may require the submission of additional information if needed to adequately review any such proposal.

B. The Division shall review each investment business case submitted in accordance with this section and recommend its approval or rejection to the CIO pursuant to the policies and procedures developed in § 2.2-2016.1.

C. In accordance with policies and standards outlined in the Commonwealth Project Management Standard, the CIO shall review the business case for any Commonwealth information technology project or procurement and approve or disapprove.

2011, c. 739; 2015, c. 768; 2016, c. 296.

§ 2.2-2019. Repealed

Repealed by Acts 2011, c. 739, cl. 2.

§ 2.2-2020. Procurement approval for information technology projects

An executive branch agency shall submit a copy of any Invitation for Bid (IFB) or Request for Proposal (RFP) for a procurement related to an information technology project to the Division. The Division shall review the IFB or RFP and recommend its approval or rejection to the CIO. The agency shall submit a copy of any proposed contract or final contract to the Division. The Division shall review the proposed contract or final contract and recommend its approval or rejection to the CIO. A project shall be granted project initiation approval as provided by the Commonwealth Project Management Standard before the award of any contract.

2003, cc. 981, 1021; 2010, cc. 136, 145; 2011, c. 739; 2016, c. 296.

§ 2.2-2021. Project oversight committees

A. Whenever the project charter has been approved for an enterprise information technology project, the Secretary shall establish an Internal Agency Oversight Committee (IAOC) and a Secretariat Oversight Committee (SOC). The IAOC shall represent all business or functional stakeholders of the project, including stakeholders in other agencies, assure that all stakeholders have the opportunity to work together toward a mutually beneficial integrated solution, have the authority to approve or reject any changes in the project's scope, schedule, or budget, provide oversight and direction to the project, and review and approve the schedule baseline and all project documentation. The SOC shall represent all business or functional stakeholders of the project, including stakeholders in other secretariats, validate the proposed project business case, review

and make recommendations on changes in the project's scope, schedule, or budget, and review Independent Verification and Validation reports and recommend corrective actions if needed.

B. For all other projects, other than enterprise information technology projects, the CIO shall establish an IAOC and an SOC in accordance with the Commonwealth Project Management Standard.

2003, cc. 981, 1021; 2010, cc. 136, 145; 2011, c. 739; 2015, c. 768; 2016, c. 296.

Article 3 - VIRGINIA TECHNOLOGY INFRASTRUCTURE FUND

§ 2.2-2022. Definitions; purpose

A. As used in this article, unless the context requires a different meaning:

"Costs" means the reasonable and customary charges for goods and services incurred or to be incurred in major information technology projects.

"Technology infrastructure" means telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.

B. In order for the Commonwealth to take advantage of technological applications in providing services and solving problems of Virginia's citizens, there is a need to reinvest savings that accrue from increased usage of technology into new and emerging technologies that will provide for both greater efficiencies and better responsiveness. The purpose of this article is to create the Virginia Technology Infrastructure Fund (the Fund). The Fund shall make moneys available to state agencies and institutions of higher education for major information technology projects.

1996, cc. 94, 823, §§ 9-145.52, 9-145.53; 1999, cc. 412, 421, 433; 2001, c. 844, § 2.2-1702; 2003, cc. 981, 1021.

§ 2.2-2023. Virginia Technology Infrastructure Fund created; contributions

A. The Virginia Technology Infrastructure Fund (the Fund) is created in the state treasury. The Fund is to be used to fund major information technology projects or to pay private partners as authorized in subsection C of § 2.2-2007.

B. The Fund shall consist of: (i) the transfer of general and nongeneral fund appropriations from executive branch agencies which represent savings that accrue from reductions in the cost of information technology and communication services; (ii) the transfer of general and nongeneral fund appropriations from executive branch agencies which represent savings from the implementation of information technology enterprise projects; (iii) funds identified pursuant to subsection C of § 2.2-2007; (iv) such general and nongeneral fund fees or surcharges as may be assessed to executive branch agencies for enterprise technology projects; (v) gifts, grants, or donations from public or private sources; and (vi) such other funds as may be appropriated by the General Assembly. Savings shall be as identified by the CIO through a methodology reviewed by the ITAC and approved by the Secretary of Finance. The Auditor of Public Accounts shall certify the

amount of any savings identified by the CIO. For public institutions of higher education, however, savings shall consist only of that portion of total savings that represent general funds. The State Comptroller is authorized to transfer cash consistent with appropriation transfers. Appropriated funds from federal sources are exempted from transfer. Except for funds to pay private partners as authorized in subsection C of § 2.2-2007, moneys in the Fund shall only be expended as provided by the appropriation act.

Interest earned on the Fund shall be credited to the Fund. The Fund shall be permanent and non-reverting. Any unexpended balance in the Fund at the end of the biennium shall not be transferred to the general fund of the state treasury.

1996, cc. 94, 823, §§ 9-145.54, 9-145.55; 2001, c. 844, § 2.2-1703; 2003, cc. 981, 1021; 2010, cc. 136, 145; 2016, c. 296.

§ 2.2-2024. Annual plan; allowable uses of Fund

The CIO shall prepare a plan that identifies the projects in which the Fund will participate. The plan shall be consistent with the statewide plan for information technology and shall consider the use of existing resources and long-term operation and maintenance costs. Projects having the greatest benefit to state government as a whole shall have the highest priority in the plan.

1996, cc. 94, 823, § 9-145.56; 1999, cc. 412, 421, 433; 2001, c. 844, § 2.2-1704; 2003, cc. 981, 1021; 2009, c. 86.

Article 4 - VIRGINIA GEOGRAPHIC INFORMATION NETWORK

§ 2.2-2025. Definitions

As used in this article, unless the context requires a different meaning:

"Base map data" means the digitized common geographic data that are used by most geographic information systems applications to reference or link attribute or other geographic data.

"Division" means the Geographic Information Network Division.

"Geographic data" means data that contain either coordinates that reference a geographic location or area or attribute data that can be related to a geographic area or location.

"Geographic information system (GIS)" means a computerized system that stores and links geographic data to allow a wide range of information processing and display operations, as well as map production, analysis, and modeling.

1997, c. 817, § 2.1-563.36; 1999, cc. 412, 421, 433; 2001, c. 844, § 2.2-1705; 2003, cc. 981, 1021.

§ 2.2-2026. Geographic Information Network Division established

There is established within VITA a Geographic Information Network Division (the Division), which shall foster the creative utilization of geographic information and oversee the development of a catalog of GIS data available in the Commonwealth. The Division shall be headed by a coordinator

who shall be under the supervision of and report to the CIO. The Division shall exercise the powers and duties conferred in this article.

1997, c. 817, § 2.1-563.37; 1999, cc. 412, 421, 433; 2001, c. 844, § 2.2-1706; 2003, cc. 981, 1021.

§ 2.2-2027. Powers and duties of the Division; Division coordinator

A. The powers and duties of the Division shall include:

1. Requesting the services, expertise, supplies and facilities of VITA from the CIO on issues concerning the Division;

2. Accepting grants from the United States government and agencies and instrumentalities thereof and any other source. To those ends, the Division shall have the power to comply with such conditions and execute such agreements as may be necessary or desirable;

3. Fixing, altering, charging, and collecting rates, rentals, and other charges for the use or sale of products of, or services rendered by, the Division, at rates which reflect the fair market value;

4. Soliciting, receiving, and considering proposals for funding projects or initiatives from any state or federal agency, local or regional government, public institution of higher education, nonprofit organization, or private person or corporation;

5. Soliciting and accepting funds, goods and in-kind services that are part of any accepted project proposal;

6. Establishing ad hoc committees or project teams to investigate related technology or technical issues and providing results and recommendations for Division action; and

7. Establishing such bureaus, sections or units as the Division deems appropriate to carry out its powers and duties.

B. The Coordinator shall:

1. Oversee the development of and recommend to VITA the development of those policies, standards, and guidelines required to support state and local government exchange, acquisition, storage, use, sharing and distribution of geographic or base map data and related technologies;

2. Foster the development of a coordinated comprehensive system for providing ready access to electronic state government geographic data products for individuals, businesses, and other entities;

3. Initiate and manage projects or conduct procurement activities relating to the development or acquisition of geographic data or statewide base map data or both;

4. Plan for and coordinate the development or procurement of priority geographic base map data;

5. Develop, maintain, and provide, in the most cost-effective manner, access to the catalog of Virginia geographic data and governmental geographic data users;

6. Provide, upon request, advice and guidance on all agreements and contracts from all branches of state government for geographic data acquisition and design and the installation and maintenance of geographic information systems;

7. Compile a data catalog consisting of descriptions of GIS coverages maintained by individual executive branch and local government agencies;

Nothing in this article shall be construed to require that GIS data be physically delivered to the Division. All executive branch agencies that maintain GIS databases shall report to the Division the details of the data that they develop, acquire, and maintain. Each agency shall submit quarterly reports to the Division specifying all updates to existing data as well as all data development and acquisition currently in progress. Data exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) need not be reported to the Division.

8. Identify and collect information and technical requirements to assist the Division in setting priorities for the development of state digital geographic data and base maps that meet the needs of state agencies, institutions of higher education, and local governments;

9. Provide services, geographic data products, and access to the repository at rates established by the Division; and

10. Ensure the compliance of those policies, standards, and guidelines developed by VITA required to support and govern the security of state and local government exchange, acquisition, storage, use, sharing, and distribution of geographic or base map data and related technologies.

1997, c. 817, § 2.1-563.38; 1999, cc. 412, 421, 433; 2001, c. 844, § 2.2-1707; 2003, cc. 981, 1021; 2016, c. 296.

§ 2.2-2028. GIS Fund created

There is hereby created in the state treasury a special, nonreverting fund to be known as the GIS Fund, hereafter referred to as the Fund. The Fund shall be established on the books of the Comptroller. All moneys collected pursuant to subsection A of § 2.2-2027 shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely for the purposes set forth in this article. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the CIO.

1997, c. 817, § 2.1-563.39; 2001, c. 844, § 2.2-1708; 2003, cc. 981, 1021.

§ 2.2-2029. Additional powers and duties of the CIO

The CIO shall have the power and duty, on the recommendation of the Coordinator, to (i) receive and disburse funds; (ii) enter into contracts for the purpose of carrying out the provisions of this

article; and (iii) rent office space and procure equipment, goods, and services that are necessary to carry out the provisions of this article.

1997, c. 817, § 2.1-563.40; 1999, cc. 412, 421, 433; 2001, c. 844, § 2.2-1709; 2003, cc. 981, 1021.

§ 2.2-2030. Nonstock corporation to assist in the development of GIS data

VITA is hereby authorized to establish a nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as an instrumentality to assist VITA and the Division in the development and acquisition of geographic data and statewide base map data. On or before December 1 of each year, VITA shall report on the activities of the nonstock corporation to the Governor and the General Assembly.

2001, c. 709, § 2.2-1709.1; 2003, cc. 981, 1021.

Article 5 - DIVISION OF PUBLIC SAFETY COMMUNICATIONS

§ 2.2-2031. Division of Public Safety Communications established; appointment of Virginia Public Safety Communications Coordinator; duties of Division

A. There is established within VITA a Division of Public Safety Communications (the Division), which shall be headed by a Virginia Public Safety Communications Coordinator, appointed by the CIO with the advice and consent of the 9-1-1 Services Board. The Division shall consist of such personnel as the CIO deems necessary. The operating expenses, administrative costs, and salaries of the employees of the Division shall be paid from the Wireless E-911 Fund created pursuant to § 56-484.17.

B. The Division shall provide staff support to the 9-1-1 Services Board and encourage, promote, and assist in the development and deployment of statewide enhanced emergency telecommunications systems.

2000, c. 1064, § 2.1-563.35:4; 2001, c. 844, § 2.2-1710; 2003, cc. 981, 1021; 2009, c. 614; 2011, c. 138; 2016, c. 361.

Article 6 - VIRGINIA INFORMATION PROVIDERS NETWORK

§ 2.2-2032. Repealed

Repealed by Acts 2005, c. 939, cl. 2.

Article 7 - DIVISION OF ENTERPRISE APPLICATIONS

§§ 2.2-2033, 2.2-2034. Repealed

Repealed by Acts 2010, cc. 136 and 145, cl. 2, effective March 11, 2010.

Part D - STATE AUTHORITIES, BOARDS, COMMISSIONS, COUNCILS, FOUNDATIONS AND OTHER COLLEGIAL BODIES

Chapter 21 - GENERAL PROVISIONS

§ 2.2-2100. Classification of executive branch boards, commissions and councils

A. Effective July 1, 1986, every collegial body established by law or executive order within the executive branch of state government shall be classified according to its level of authority as follows:

"Advisory" -- A board, commission or council shall be classified as advisory when its purpose is to provide advice and comment to an executive branch agency or office. An advisory board, commission or council serves as a formal liaison between the agency or office and the public to ensure that the agency or office understands public concerns and that the activities of the agency or office are communicated to the public. An advisory board, commission or council does not serve a regulatory or rule-making purpose. It may participate in the development of public policy by providing comment and advice.

"Policy" -- A board, commission or council shall be classified as policy if it is specifically charged by statute to promulgate public policies or regulations. It may also be charged with adjudicating violations of those policies or regulations. Specific functions of the board, commission or council may include, but are not limited to, rate setting, distributing federal funds, and adjudicating regulatory or statutory violations, but each power shall be enumerated by law. Policy boards, commissions or councils are not responsible for supervising agencies or employing personnel. They may review and comment on agency budget requests.

"Supervisory" -- A board, commission, or council shall be classified as supervisory if it is responsible for agency operations including approval of requests for appropriations. A supervisory board, commission, or council appoints the agency director and ensures that the agency director complies with all board and statutory directives. The agency director is subordinate to the board. Notwithstanding the foregoing, the Board of Education shall be considered a supervisory board.

B. Each executive branch board, commission or council shall be assigned only one of the above classifications. The classification for boards and councils that are created by law shall be designated by the enabling legislation. The classification for commissions that are created by executive order shall be designated by the executive order.

1985, c. 419, § 9-6.25; 2001, c. 844.

§ 2.2-2101. (Effective until October 1, 2016) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any

law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.3; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23-231.25; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23-231.31; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23-231.15; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Standards of Learning Innovation Committee, who shall be appointed as provided for in § 22.1-253.13:10; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided for in § 2.2-2685; to members of the State Executive Council for Children's Services, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Board of Workforce Development, who shall be appointed as provided for in § 2.2-2471; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-222.3; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Southwest Virginia Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735; or to members of the Virginia Growth and Opportunity Board, who shall be appointed as provided in § 2.2-2485.

1977, c. 629, § 9-6.23; 1978, c. 834; 1988, cc. 839, 888; 1989, c. 198; 1991, c. 627; 1992, cc. 407, 771; 1993, cc. 248, 726, 751, 752, 757; 1994, cc. 486, 843, 858, 951; 1994, 2nd Sp. Sess., c. 7; 1995, cc. 361, 814, 815; 1996, c. 932; 1997, cc. 360, 361, 813, 817; 1998, cc. 622, 724; 1999, cc. 412, 421, 433, 512, 840, 855; 2001, cc. 577, 844; 2003, cc. 94, 451, 657, 670, 854, 900; 2004, c. 37; 2005, cc. 774, 786, 799, 868, 881, 930; 2006, cc. 707, 808, 842, 860, 901; 2007, c. 915; 2008, cc. 654, 659; 2009, cc. 210, 859; 2010, c. 787; 2011, cc. 521, 548, 780, 858; 2012, cc. 803, 835; 2013, cc. 372, 805; 2014, cc. 115, 490, 585, 622, 815; 2015, cc. 366, 369; 2016, cc. 778, 779.

§ 2.2-2101. (Effective October 1, 2016, until July 1, 2017) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23.1-3126; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23.1-3121; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23.1-3112; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23.1-3117; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Standards of Learning Innovation Committee, who shall be appointed as provided for in § 22.1-253.13:10; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the Council on Virginia's Future, who shall be appointed as provided for in § 2.2-2685; to members of the State Executive Council for Children's Services, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Board of Workforce Development, who shall be appointed as provided for in § 2.2-2471; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-222.3; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Southwest Virginia Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735; or to members of the Virginia Growth and Opportunity Board, who shall be appointed as provided in § 2.2-2485.

1977, c. 629, § 9-6.23; 1978, c. 834; 1988, cc. 839, 888; 1989, c. 198; 1991, c. 627; 1992, cc. 407, 771; 1993, cc. 248, 726, 751, 752, 757; 1994, cc. 486, 843, 858, 951; 1994, 2nd Sp. Sess., c. 7; 1995, cc. 361, 814, 815; 1996, c. 932; 1997, cc. 360, 361, 813, 817; 1998, cc. 622, 724; 1999, cc. 412, 421, 433, 512, 840, 855; 2001, cc. 577, 844; 2003, cc. 94, 451, 657, 670, 854, 900; 2004, c. 37; 2005, cc. 774, 786, 799, 868, 881, 930; 2006, cc. 707, 808, 842, 860, 901; 2007, c. 915; 2008,

cc. 654, 659; 2009, cc. 210, 859; 2010, c. 787; 2011, cc. 521, 548, 780, 858; 2012, cc. 803, 835; 2013, cc. 372, 805; 2014, cc. 115, 490, 585, 622, 815; 2015, cc. 366, 369; 2016, cc. 778, 779.

§ 2.2-2101. (Effective July 1, 2017) Prohibition against service by legislators on boards, commissions, and councils within the executive branch; exceptions

Members of the General Assembly shall be ineligible to serve on boards, commissions, and councils within the executive branch of state government who are responsible for administering programs established by the General Assembly. Such prohibition shall not extend to boards, commissions, and councils engaged solely in policy studies or commemorative activities. If any law directs the appointment of any member of the General Assembly to a board, commission, or council in the executive branch of state government that is responsible for administering programs established by the General Assembly, such portion of such law shall be void, and the Governor shall appoint another person from the Commonwealth at large to fill such a position.

The provisions of this section shall not apply to members of the Board for Branch Pilots, who shall be appointed as provided for in § 54.1-901; to members of the Board of Trustees of the Southwest Virginia Higher Education Center, who shall be appointed as provided for in § 23.1-3126; to members of the Board of Trustees of the Southern Virginia Higher Education Center, who shall be appointed as provided for in § 23.1-3121; to members of the Board of Directors of the New College Institute who shall be appointed as provided for in § 23.1-3112; to members of the Virginia Interagency Coordinating Council who shall be appointed as provided for in § 2.2-5204; to members of the Board of Veterans Services, who shall be appointed as provided for in § 2.2-2452; to members appointed to the Board of Trustees of the Roanoke Higher Education Authority pursuant to § 23.1-3117; to members of the Virginia Geographic Information Network Advisory Board, who shall be appointed as provided for in § 2.2-2423; to members of the Standards of Learning Innovation Committee, who shall be appointed as provided for in § 22.1-253.13:10; to members of the Board of Visitors of the Virginia School for the Deaf and the Blind, who shall be appointed as provided for in § 22.1-346.2; to members of the Substance Abuse Services Council, who shall be appointed as provided for in § 2.2-2696; to members of the Criminal Justice Services Board, who shall be appointed as provided in § 9.1-108; to members of the State Executive Council for Children's Services, who shall be appointed as provided in § 2.2-2648; to members of the Virginia Board of Workforce Development, who shall be appointed as provided for in § 2.2-2471; to members of the Volunteer Firefighters' and Rescue Squad Workers' Service Award Fund Board, who shall be appointed as provided for in § 51.1-1201; to members of the Secure Commonwealth Panel, who shall be appointed as provided for in § 2.2-222.3; to members of the Forensic Science Board, who shall be appointed as provided for in § 9.1-1109; to members of the Southwest Virginia Cultural Heritage Foundation, who shall be appointed as provided in § 2.2-2735; or to members of the Virginia Growth and Opportunity Board, who shall be appointed as provided in § 2.2-2485.

1977, c. 629, § 9-6.23; 1978, c. 834; 1988, cc. 839, 888; 1989, c. 198; 1991, c. 627; 1992, cc. 407, 771; 1993, cc. 248, 726, 751, 752, 757; 1994, cc. 486, 843, 858, 951; 1994, 2nd Sp. Sess., c. 7;

1995, cc. 361, 814, 815; 1996, c. 932; 1997, cc. 360, 361, 813, 817; 1998, cc. 622, 724; 1999, cc. 412, 421, 433, 512, 840, 855; 2001, cc. 577, 844; 2003, cc. 94, 451, 657, 670, 854; 2004, c. 37; 2005, cc. 774, 786, 799, 868, 881, 930; 2006, cc. 707, 808, 842, 860, 901; 2007, c. 915; 2008, cc. 654, 659; 2009, cc. 210, 859; 2010, c. 787; 2011, cc. 521, 548, 780, 858; 2012, cc. 803, 835; 2013, cc. 372, 805; 2014, cc. 115, 490, 585, 622; 815; 2015, cc. 366, 369; 2016, cc. 778, 779.

§ 2.2-2102. "Citizen member" appointments to executive branch boards and commissions

Positions on boards and commissions designated for "citizen members," "consumer members," and "representatives of the public" are intended to ensure that the composition of a particular board or commission reflects citizen as well as professional interests. Except as otherwise provided by law, the Governor shall, when making an appointment to an executive branch board or commission specifically designated for a "citizen member," "consumer member," or "representative of the public," appoint a person who (i) is not by training or experience a practitioner in the subject area of concern to the board or commission, (ii) is not the spouse, parent, child or sibling of such a practitioner, and (iii) has no direct or indirect financial interest, except as a consumer, in the subject area of concern to the board or commission.

1984, c. 579, § 9-6.24; 2001, c. 844.

§ 2.2-2103. Cooperation of other agencies with authorities, boards, commissions, councils, and other collegial bodies

Upon request, all agencies and political subdivisions of the Commonwealth shall assist any authority, board, commission, council or other collegial body established in this title in carrying out the respective duties for which each was created.

1968, c. 567, § 9-84.05; 1973, c. 431, § 9-84.9; 1978, c. 103, § 2.1-335.3; 1991, cc. 44, 594, § 9-145.20; 1992, c. 609, § 9-145.34; 1993, c. 162, § 9-145.49; 1995, cc. 638, 815, §§ 2.1-548.42, 9-344; 1996, cc. 97, 589, 599, §§ 2.1-548.52, 9-153; 1999, c. 976, § 9-304.5; 2001, c. 844.

§ 2.2-2104. Compensation and expenses

Compensation and expenses to members of state boards, commissions, councils and other similar bodies shall be paid in accordance with Chapter 28 (§ 2.2-2800 et seq.) of this title.

1980, c. 728, § 2.1-20.3; 1981, c. 181; 1998, c. 790; 2001, c. 844.

§ 2.2-2105. Investigation of management of institutions or conduct of officers or employees

Whenever any board of visitors to any of the institutions of the Commonwealth deem it necessary or expedient to investigate the management of their institution or the conduct of any of its officers or employees, such board, or a committee of its members selected by the board, shall have such power and authority to send for persons and papers or to order the attendance of witnesses and compel their attendance as is now conferred upon a committee appointed by the General Assembly or either branch thereof by § 30-10. The oath to be taken by any witness examined by such board or committee may be administered by the president or the presiding officer of the board, chairman of its committee, or the clerk or secretary of the board or committee. All expenses

incurred in summoning or in the attendance of such witness shall be paid out of the funds of the institution whose boards made or ordered the investigation.

Code 1919, § 1096, § 9-13; 2001, c. 844.

§ 2.2-2106. Expenses of certain boards; appearances before General Assembly

A. The board of directors of the several state hospitals and the boards of directors of the various institutions of learning receiving aid from the Commonwealth shall receive their actual, itemized expenses incurred in the discharge of their duties in attending the meetings of the boards or committees.

B. No officer of any university, college, school, hospital, or other institution or board maintained in part or in whole by the Commonwealth shall spend or appropriate any money for the purpose of sending any member of the board or officials of such institution or other person to appear before the General Assembly, or any committee thereof, for the purpose of advocating in any way any appropriation for any institution supported in whole or in part by the Commonwealth. However, when any committee of the General Assembly desires information in regard to the needs of any state institution it may by proper resolution so determine, and request that any institution or board thereof send one or more competent persons to give the information desired, and the expense thereof may be paid out of the funds appropriated by the Commonwealth for the support of that institution.

Code 1919, §§ 1097, 1098, §§ 9-14, 9-15; 1998, c. 790; 2001, c. 844.

Chapter 22 - AUTHORITIES

Article 1 - GENERAL PROVISIONS

§ 2.2-2200. Definitions

As used in this chapter, unless the context requires a different meaning:

"Authority" means the respective political subdivisions of the Commonwealth created in this subpart.

"Board" means the respective boards of directors for the authorities created in this subpart.

"Bonds" means any bonds, refunding bonds, notes, debentures, interim certificates, or any bond, grant, revenue anticipation notes or any other evidences of indebtedness or obligation of an authority, whether in temporary or definitive form and whether the interest thereon is exempt from federal income taxation.

"Commonwealth" or "state" means the Commonwealth of Virginia or any of its agencies or departments.

"Federal agency" means the United States; the President of the United States; and any department, corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States.

1995, c. 638, § 2.1-548.27; 1999, cc. 852, 881, § 2.1-548.55; 2001, c. 844; 2005, c. 839.

Article 2 - COMMERCIAL SPACE FLIGHT AUTHORITY

§ 2.2-2201. Short title; definitions

A. This article shall be known and may be cited as the "Virginia Commercial Space Flight Authority Act."

B. As used in this article, unless the context requires a different meaning:

"Authority" means the Virginia Commercial Space Flight Authority.

"Board" means the board of directors of the Authority.

"Project" means the construction, improvement, furnishing, maintenance, acquisition or operation of any facility or the provision for or funding of any activity that will further the purposes described in § 2.2-2202.

1995, c. 758, §§ 9-266.1, 9-266.2; 2001, c. 844; 2012, cc. 779, 817.

§ 2.2-2202. Declaration of public purpose; Authority created

The General Assembly has determined that there exists in the Commonwealth a need to (i) disseminate knowledge pertaining to scientific and technological research and development among public and private entities; (ii) promote Science, Technology, Engineering, and Math (STEM) education; and (iii) promote industrial and economic development through the development and promotion of the commercial space flight industry. In order to facilitate and coordinate the advancement of these needs, there is hereby created the Virginia Commercial Space Flight Authority, with the powers and duties set forth in this article, as a public body corporate and as a political subdivision of the Commonwealth. The Authority is constituted as a public instrumentality exercising public functions, and the exercise by the Authority of the powers and duties conferred by this article shall be deemed and held to be the performance of an essential government function of the Commonwealth and a public purpose.

1995, c. 758, § 9-266.3; 2001, c. 844; 2012, cc. 779, 817.

§ 2.2-2203. Board of directors; members and officers; Executive Director

The Authority shall be governed by a board of directors consisting of nine members, two of whom shall be the Secretary of Transportation and the Director of the Virginia Department of Aviation or their respective designees. The remaining seven members shall be appointed by the Governor as follows: one member representing the business community; one member representing the financial industry; one member representing the marketing industry; one member representing the legal industry; one member representing the research and development industry; and two at-large members. Of the members appointed by the Governor, one shall be appointed for a term of one year, two for terms of two years, two for terms of three years, and two for terms of four years from the effective date of their appointment. Thereafter, the members of the Board shall be appointed for terms of four years. All members shall serve until their successors are appointed. Any

appointment to fill a vacancy shall be for the unexpired term. No member appointed by the Governor shall be eligible to serve more than two consecutive terms; however, a member appointed to fill a vacancy may serve two additional consecutive terms. Members shall serve at the pleasure of the Governor and shall be confirmed by the General Assembly. Members of the Board shall receive reimbursement for their expenses and shall be compensated at the rate provided in § 2.2-2813 for each day spent on Board business.

The Board shall annually elect one of its members as chairman and another as vice-chairman and may also elect from its membership, or appoint from the Authority's staff, a secretary and a treasurer and prescribe their powers and duties. The chairman or, in his absence, the vice-chairman shall preside at all meetings of the Board. In the absence of both the chairman and vice-chairman, the Board shall appoint a chairman pro tempore, who shall preside at such meetings. Five members shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise all the rights and perform all the duties of the Authority.

The Board may employ an Executive Director of the Authority, who shall serve at the pleasure of the Board, to direct the day-to-day operations and activities of the Authority and carry out the powers and duties conferred upon him by the Board, including powers and duties involving the exercise of discretion. The Executive Director shall also exercise and perform such other powers and duties as may be lawfully delegated to him and such powers and duties as may be conferred or imposed upon him by law. The Executive Director's compensation from the Commonwealth shall be fixed by the Board in accordance with law. Such compensation shall be established at a level that will enable the Authority to attract and retain a capable Executive Director. The Executive Director shall employ or retain such other agents or employees subordinate to the Executive Director as may be necessary to carry out the powers and duties of the Authority.

1995, c. 758, § 9-266.4; 1999, cc. 412, 421, 433; 2001, c. 844; 2009, c. 82; 2012, cc. 779, 817.

§ 2.2-2203.1. Advisory Committee

The Board shall form a nonvoting advisory committee to provide assistance and support to the Authority on all matters, with the exception of the annual budget and personnel issues. The Advisory Committee shall consist of six members as follows: two members representing the commercial aerospace industry; two members representing the higher education community; the county administrator from the County of Accomack; and the county executive from the County of Northampton. Advisory Committee members shall be nominated by members of the Board and approved by the Board. Each member of the Advisory Committee shall serve a term of four years, except for the county administrator from the County of Accomack (or his designee) and the county executive from the County of Northampton (or his designee), who shall be appointed for a term coincident with his term as county administrator or county executive, respectively.

2012, cc. 779, 817.

§ 2.2-2203.2. Planning

The Board shall initiate and further plan for the development of commercial space flight in the Commonwealth and, to this end, shall keep informed as to the present requirements and likely future needs of any and all space flight facilities located within the Commonwealth or operated by the Authority. The Board shall submit a strategic plan to the Governor and the General Assembly no later than December 1, 2012, and such plan shall be updated every four years thereafter.

2012, cc. 779, 817.

§ 2.2-2203.3. Employees; employment; personnel rules

A. Employees of the Authority shall be employed on such terms and conditions as established by the Board. The Board shall develop and adopt personnel rules, policies, and procedures to give its employees grievance rights, ensure that employment decisions shall be based upon the merit and fitness of applicants, and prohibit discrimination on the basis of race, religion, color, sex, or national origin.

B. Any employee of the Virginia Commercial Space Flight Authority who is a member of any plan providing health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) shall continue to be a member of such health insurance plan under the same terms and conditions. Notwithstanding subsection A of § 2.2-2818, the costs of providing health insurance coverage to such employees who elect to continue to be members of the state employees' health insurance plan shall be paid by the Authority. Alternatively, an employee may elect to become a member of any health insurance plan established by the Authority. The Authority is authorized to (i) establish a health insurance plan for the benefit of its employees and (ii) enter into agreements with the Department of Human Resource Management providing for the coverage of its employees under the state employees' health insurance plan, provided that such agreements require the Authority to pay the costs of providing health insurance coverage under such plan.

C. Any retired employee of the Virginia Commercial Space Flight Authority shall be eligible to receive the health insurance credit set forth in § 51.1-1400, provided the retired employee meets the eligibility criteria set forth in that section.

D. The Authority is hereby authorized to establish one or more retirement plans for the benefit of its employees (the Authority retirement plan). For purposes of such plans, the provisions of § 51.1-126.4 shall apply, mutatis mutandis. Any Authority employee who is a member of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1 (the statutory optional retirement plan) at the time the Authority retirement plan becomes effective shall continue to be a member of the Virginia Retirement System or the statutory optional retirement plan under the same terms and conditions, unless such employee elects to become a member of the Authority retirement plan. For purposes of this subsection, the "Virginia Retirement System" shall include any hybrid retirement program established under Title 51.1.

The following rules shall apply:

1. The Authority shall collect and pay all employee and employer contributions to the Virginia Retirement System or the statutory optional retirement plan for retirement and group life insurance in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 for any employee who elects to remain a member of the Virginia Retirement System or a statutory optional retirement plan.

2. Employees who elect to become members of the Authority retirement plan shall be given full credit for their creditable service as defined in § 51.1-124.3 and vesting and benefit accrual under the Authority retirement plan. For any such employee, employment with the Authority shall be treated as employment with any nonparticipating employer for purposes of the Virginia Retirement System or any statutory optional retirement plan.

3. For employees who elect to become members of the Authority retirement plan, the Virginia Retirement System or the statutory optional retirement plan, as applicable, shall transfer to the Authority retirement plan assets equal to the actuarially determined present value of the accrued basic benefits for such employees as of the transfer date. For purposes hereof, "basic benefits" means the benefits accrued under the Virginia Retirement System or under the statutory optional retirement plan based on creditable service and average final compensation as defined in § 51.1-124.3. The actuarial present value shall be determined by using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System or the statutory optional retirement plan so that the transfer of assets to the Authority retirement plan will have no effect on the funded status and financial stability of the Virginia Retirement System or the statutory optional retirement plan. The Authority shall reimburse the Virginia Retirement System for the cost of actuarial services necessary to determine the present value of the accrued basic benefit of employees who transfer to an Authority retirement plan.

4. The Authority may provide that employees of the Authority who are eligible to participate in any deferred compensation plan sponsored by the Authority shall be enrolled automatically in such plan, unless such employee elects, in a manner prescribed by the Board of the Authority, not to participate. The amount of the deferral under the automatic enrollment and the group of employees to which the automatic enrollment shall apply shall be set by the Board, provided, however, that such employees are provided the opportunity to increase or decrease the amount of the deferral in accordance with the Internal Revenue Code of 1986, as amended.

E. The Authority is hereby authorized to establish a plan providing short-term disability and long-term disability benefits for its employees.

2012, cc. 779, 817.

§ 2.2-2203.4. Trust for postemployment benefits authorized; administration

A. The Authority is hereby authorized to establish and maintain a trust or equivalent arrangement for the purpose of accumulating and investing assets to fund postemployment benefits other than pensions, as defined herein. Such trust or equivalent arrangement shall be irrevocable. The assets

of such trust or similar arrangement (i) shall be dedicated to providing benefits to retirees and their beneficiaries in accordance with the terms of the plan or programs providing postemployment benefits other than pensions and (ii) shall be exempt from taxation and execution, attachment, garnishment, or any other process against the Authority or a retiree or beneficiary. The funds of the trust or similar arrangement shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Authority, and shall be invested and administered solely in the interests of the active or former employees (and their dependents or beneficiaries) entitled to postemployment benefits other than pensions.

B. The Authority may make appropriations to any such trust or equivalent arrangement, and the Authority may require active and former employees covered by a postemployment benefit program to contribute to the trust or equivalent arrangement through payments or deductions from their wages, salaries, or pensions.

C. Nothing in this section shall be construed to inhibit the Authority's right to revise or discontinue its plans or programs providing such postemployment benefits other than pensions for its active and former officers and employees as it may deem necessary. If all plans or programs providing such postemployment benefits other than pensions for which the trust or equivalent arrangement is established are repealed or terminated by the Authority, then there shall be no continuing responsibility of the Authority to continue to make appropriations to such trust or equivalent arrangement, and the assets of such trust or equivalent arrangement shall be used to provide any benefits continuing to be due to active or former employees (and their dependents or beneficiaries) under such plans or programs. If there are no active or former employees (or dependents or beneficiaries) due a benefit under any plan or program providing such postemployment benefits other than pensions for which the trust or equivalent arrangement was established, then any remaining assets may revert to the Authority.

D. Postemployment benefits other than pensions shall be defined by the Authority pursuant to applicable accounting standards and law. Such benefits may include, but are not limited to, medical, prescription drug, dental, vision, hearing, life, or accident insurance (not provided through a pension plan), long-term care benefits, and long-term disability benefits (not covered under a pension plan) provided to individuals who have terminated their service and to the dependents of such individuals, and may be provided by purchasing insurance, by a program of self-insurance, or by a combination of both. However, postemployment benefits other than pensions shall not include defined benefit pension plans for retirees and eligible dependents of retirees, termination benefits, or other pension benefits. Such postemployment benefits other than pensions may be provided to the officers and employees or to their dependents, estates, or designated beneficiaries. Any benefits arising from any postemployment benefits other than pension programs shall be clearly defined and strictly construed.

E. Notwithstanding any other provision of law, the moneys and other property comprising the trust or equivalent arrangement established hereunder shall be invested, reinvested, and managed

by the Authority or the trust company or bank having powers of a trust company within or without the Commonwealth that is selected by the Board to act as a trustee for the trust or equivalent arrangement with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with the same aims. Such investments shall be diversified so as to minimize the risk of large losses unless under the circumstances it is clearly prudent not to do so. Such investments shall not be limited by Chapter 45 (§ 2.2-4500 et seq.).

2012, cc. 779, 817.

§ 2.2-2204. Powers of the Authority

The Authority is granted all powers necessary or convenient for the carrying out of its statutory purposes, including, but not limited to, the power to:

1. Sue and be sued, implead and be impleaded, complain and defend in all courts;

2. Adopt, use, and alter at will a common seal;

3. Acquire any project and property, real, personal or mixed, tangible or intangible, or any interest therein, by purchase, gift or devise and to sell, lease (whether as lessor or lessee), transfer, convey or dispose of any project or property, real, personal or mixed, tangible or intangible or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board;

4. Plan, develop, undertake, carry out, construct, equip, improve, rehabilitate, repair, furnish, maintain and operate projects;

5. Adopt an annual budget for the Authority's capital improvements and operations;

6. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the power of the Authority shall be exercised and its duties performed. Such bylaws, rules, and regulations may provide for such committees and their functions as the Authority may deem necessary and expedient. Such bylaws, rules, and regulations shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.);

7. Fix, alter, charge, and collect rates, rentals, fees, and other charges for the use of projects of, the sale of products of, or services rendered by the Authority at rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority; the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties; the payment of the costs accomplishing its purposes set forth in § 2.2-2202; the payment of the principal of and interest on its obligations; and the creation of reserves for such purposes, for other purposes of the Authority and to pay the cost of maintaining, repairing and operating any project and fulfilling the terms and provisions of any agreements made with the purchasers or holders of any such obligations and any other purposes as set forth in this article;

8. Borrow money, make and issue bonds including bonds as the Authority may determine to issue for the purpose of accomplishing the purposes set forth in § 2.2-2202 or for refunding bonds previously issued by the Authority, whether such outstanding bonds have matured or are then subject to redemption, or any combination of such purposes; secure the payment of all bonds, or any part thereof, by pledge, assignment or deed of trust of all or any of its revenues, rentals, and receipts or of any project or property, real, personal or mixed, tangible or intangible, or any rights and interest therein; make such agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the Authority shall deem advisable; and in general to provide for the security for said bonds and the rights of holders thereof. However, the total principal amount of bonds, including refunding bonds, outstanding at any time shall not exceed $50 million, excluding from such limit any revenue bonds. The Authority shall not issue any bonds, other than revenue bonds, that are not specifically authorized by a bill or resolution passed by a majority vote of those elected to each house of the General Assembly;

9. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this article, including interstate compacts that have been authorized by the General Assembly and where necessary consented to by the United States Congress and agreements with any person or federal agency;

10. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers and such other employees and agents as may be necessary, and to fix their compensation to be payable from funds made available to the Authority;

11. Receive and accept from any federal or private agency, foundation, corporation, association or person grants, donations of money, real or personal property for the benefit of the Authority, and to receive and accept from the Commonwealth or any state, and any municipality, county or other political subdivision thereof and from any other source, aid or contributions of either money, property, or other things of value, to be held, used and applied for the purposes for which such grants and contributions may be made;

12. Render advice and assistance, and to provide services, to institutions of higher education and to other persons providing services or facilities for scientific and technological research or graduate education, provided that credit toward a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia;

13. Develop, undertake and provide programs, alone or in conjunction with any person or federal agency, for scientific and technological research, technology management, continuing education and in-service training; however, credit towards a degree, certificate or diploma shall be granted

only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia; foster the utilization of scientific and technological research, information discoveries and data and obtain patents, copyrights and trademarks thereon; coordinate the scientific and technological research efforts of public institutions and private industry and collect and maintain data on the development and utilization of scientific and technological research capabilities;

14. Pledge or otherwise encumber all or any of the revenues or receipts of the Authority as security for all or any of the obligations of the Authority; and

15. Do all acts and things necessary or convenient to carry out the powers granted to it by law.

1995, c. 758, § 9-266.5; 1996, c. 111; 2001, c. 844; 2012, cc. 779, 817.

§ 2.2-2205. Form, terms, execution and sale of bonds; use of proceeds; interim receipts or temporary bonds; lost or destroyed bonds; faith and credit of state and political subdivisions not pledged; expenses

The bonds of each issue shall be dated, shall bear interest at such rates as are fixed by the Authority, or as may be determined in such manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by the Authority, shall mature at such time not exceeding forty years from their date as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of bonds and their manner of execution, and shall fix the denomination of the bonds and the place of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. The bonds shall be signed by the chairman or vice-chairman of the Authority or, if so authorized by the Authority, shall bear his facsimile signature, and the official seal of the Authority, or, if so authorized by the Authority, a facsimile thereof shall be impressed or imprinted thereon and attested by the secretary or any assistant secretary of the Authority, or, if so authorized by the Authority, with the facsimile signature of such secretary or assistant secretary. Any coupons attached to bonds issued by the Authority shall bear the signature of the chairman or vice-chairman of the Authority or a facsimile thereof. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons ceases to be an officer before the delivery of the bonds, his signature or facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery and any bonds may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bonds shall be the proper officers to sign such bonds although at the date of such bonds such persons may not have been such officers. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon

bonds. Bonds issued in registered form may be issued under a system of book-entry for recording the ownership and transfer of ownership of rights to receive payment of principal of, and premium on, if any, and interest on such bonds. The Authority may contract for the services of one or more banks, trust companies, financial institutions or other entities or persons, within or without the Commonwealth for the authentication, registration, transfer, exchange and payment of the bonds, or may provide such services itself. The Authority may sell such bonds in such manner, either at public or private sale, and for such price as it may determine will best effect the purposes of this article.

The proceeds of the bonds of each issue shall be used solely for the purposes, and in furtherance of the powers, of the Authority as may be provided in the resolution authorizing the issuance of such bonds or in a trust agreement authorized by § 2.2-2206 securing the bonds.

In addition to the above powers, the Authority may issue interim receipts or temporary bonds as provided in § 15.2-2616 and execute and deliver new bonds in place of bonds mutilated, lost or destroyed, as provided in § 15.2-2621.

No obligation of the Authority shall be deemed to constitute a debt, or pledge of the faith and credit, of the Commonwealth or of any political subdivision thereof, but shall be payable solely from the revenues and other funds of the Authority pledged thereto. All such obligations shall contain on the face thereof a statement to the effect that the Commonwealth, any political subdivision thereof and the Authority shall not be obligated to pay the same or the interest thereon except from revenues and other funds of the Authority pledged thereto, and that neither the faith and credit nor the taxing power of the Commonwealth or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligations.

All expenses incurred in carrying out the provisions of the act shall be payable solely from funds provided under the provisions of this act, and no liability shall be incurred by the Authority beyond the extent to which moneys have been provided under the provisions of this article.

1995, c. 758, § 9-266.6; 2001, c. 844.

§ 2.2-2206. Trust indenture or agreement securing bonds

In the discretion of the Authority, any bonds issued under the provisions of this article may be secured by a trust indenture or agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. The trust indenture or agreement or the resolution providing for the issuance of the bonds may (i) pledge or assign the revenues to be received and provide for the mortgage of any project or property or any part thereof and (ii) contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants providing for the repossession and sale by the Authority or any trustees under any trust indenture or agreement of any project, or part thereof, upon any default under the lease or sale of such project, setting forth the duties of the Authority in relation to the

acquisition of property and the planning, development, acquisition, construction, rehabilitation, establishment, improvement, extension, enlargement, maintenance, repair, operation and insurance of the project in connection with which the bonds shall have been authorized; the amounts of rates, rents, fees and other charges to be charged; the collection of such rates, rents, fees and other charges; the custody, safeguarding and application of all moneys; and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any national bank with its main office in the Commonwealth or any other state or any bank or trust company incorporated under the laws of the Commonwealth or another state that may act as depository of the proceeds of bonds or of revenues to furnish the indemnifying bonds or to pledge the securities required by the Authority. Any trust indenture or agreement or resolution may set forth the rights of action by bondholders. In addition to the foregoing, any such trust indenture or agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders including, without limitation, provisions for the assignment to a corporate trustee or escrow agent of any rights of the Authority in any project owned by, or leases or sales of any projects made by, the Authority. All expenses incurred in carrying out the provisions of the trust indenture or agreement or resolution or other agreements relating to any project, including those to which the Authority may not be a party, may be treated as a part of the cost of the operation of the project or projects.

1995, c. 758, § 9-266.7; 2001, c. 844.

§ 2.2-2207. Moneys received deemed trust funds

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The resolution authorizing the bonds of any issue or the trust indenture or agreement or resolution securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as a trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to the regulations as this article and the trust indenture or agreement or resolution may provide.

1995, c. 758, § 9-266.8; 2001, c. 844.

§ 2.2-2208. Proceedings by bondholder or trustee to enforce rights

Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust indenture or agreement or resolution, except to the extent the rights given may be restricted by the trust indenture or agreement or resolution authorizing the issuance of the bonds, may either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under the trust indenture or agreement or resolution, and may enforce and compel the performance of all duties required by this article or by the trust indenture or agreement or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging, and collecting of rates, rentals, fees, and other charges.

1995, c. 758, § 9-266.9; 2001, c. 844.

§ 2.2-2209. Bonds made securities for investment and deposit

Bonds issued by the Authority under the provisions of this article are made securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds shall be securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may hereafter be authorized by law.

1995, c. 758, § 9-266.10; 2001, c. 844.

§ 2.2-2210. Refunding bonds; bonds for refunding and for costs of additional projects

The Authority may provide for the issuance of refunding bonds of the Authority for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of bonds. The issuance of the bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same shall be governed by the provisions of this article insofar as they may be applicable.

1995, c. 758, § 9-266.11; 2001, c. 844.

§ 2.2-2211. Grants or loans of public or private funds

The Authority may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both or otherwise, to accomplish, in whole or in part, any of the purposes of this article. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth.

1995, c. 758, § 9-266.12; 2001, c. 844.

§ 2.2-2212. Moneys of Authority

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other order of such persons as the Authority may authorize to execute such warrants or orders.

1995, c. 758, § 9-266.16; 2001, c. 844.

§ 2.2-2213. Forms of accounts and records; audit; annual report

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived, shall be in a form prescribed by governmental generally accepted accounting standards. Such accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by enterprises.

The accounts of the Authority shall be audited annually by a certified public accounting firm selected by the Auditor of Public Accounts with the assistance of the Authority through a process of competitive negotiation. The cost of such audit and review shall be borne by the Authority.

The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the preceding June 30.

1995, c. 758, § 9-266.17; 2001, c. 844; 2004, c. 650; 2012, cc. 779, 817.

§ 2.2-2214. Exemption from taxes or assessments

The exercise of the powers granted by this article shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of the projects by the Authority and the undertaking of activities in the furtherance of the purposes of the Authority constitutes the performance of the essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the Authority under the provisions of this article or upon the income therefrom, including sales and use taxes on the tangible personal property used in the operations of the Authority. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of the facility businesses for which local or state taxes would otherwise be required.

Any bonds or refunding bonds issued under the provisions of this article and any transfer of such bonds shall at all times be free from state and local taxation. The interest on the bonds and any refunding bonds or bond anticipation notes shall at all times be exempt from taxation by the Commonwealth and by any of its political subdivisions.

1995, c. 758, § 9-266.18; 2001, c. 844.

§ 2.2-2215. Powers not restrictive; exemptions from Public Procurement Act and the Virginia Personnel Act

The Authority shall have the power to perform any act or carry out any function not inconsistent with state law, whether or not included in the provisions of this article, which may be, or may tend to be, useful in carrying out the provisions of this article. The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to the Authority in the exercise of any of its powers provided that the Board adopt procedures to ensure fairness and competitiveness in the procurement of goods and services and the administration of its capital outlay plan. The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) shall not apply to the Authority in the

exercise of any of its powers. The Authority shall be exempt from the provisions of §§ 2.2-1124, 2.2-1131.1, 2.2-1136, 2.2-1149, 2.2-1153, 2.2-1154, and 2.2-1156, provided that (i) the Authority adopts and the Board approves regulations governing the acquisition, lease, or sale of surplus and real property consistent with the provisions of the above-referenced sections and (ii) any acquisition, lease, or sale of real property valued in excess of $20 million shall be approved by the Governor.

1995, c. 758, § 9-266.15; 2001, c. 844; 2012, cc. 779, 817.

§ 2.2-2216. Appropriations by any government

Any government may make appropriations for the acquisition, construction, improvement, maintenance or operation of any project acquired, constructed, improved, maintained or operated by the Authority.

1995, c. 758, § 9-266.13; 2001, c. 844.

§ 2.2-2217. Conveyance, lease or transfer of property by a city or county to the Authority

Any city or county within the Commonwealth in order to provide for the construction, reconstruction, improvement, repair or management of any project, or in order to accomplish any of the purposes of this article may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to the Authority any real, personal or mixed property located within such city or county.

1995, c. 758, § 9-266.14; 2001, c. 844.

Article 3 - INNOVATION AND ENTREPRENEURSHIP INVESTMENT AUTHORITY

§ 2.2-2218. Short title; definitions

A. This article may be cited as the "Innovation and Entrepreneurship Investment Authority Act of 2009, as amended."

B. As used in this article, unless the context requires a different meaning:

"Project" shall mean the construction, improvement, furnishing, maintenance, acquisition or operation of any facility or the provision for or funding of any activity that will further the purposes described in § 2.2-2219.

1984, c. 782, §§ 9-250, 9-251; 2001, c. 844; 2009, cc. 325, 810; 2010, c. 630.

§ 2.2-2219. Declaration of public purpose; Authority created

A. It is found and determined by the General Assembly that there exists in the Commonwealth of Virginia a need to (i) promote the economic development of the Commonwealth by attracting and retaining high technology jobs and businesses in Virginia; (ii) increase industry competitiveness by supporting the application of innovative technologies that improve productivity and efficiency; (iii) mobilize support for high technology industries to commercialize new products and processes, including organizing assistance for small business and supporting select industry sectors and

regional high technology efforts; (iv) enhance and expand the scientific and technological research and development capabilities of the institutions of higher education in the Commonwealth and coordinate such capabilities with the scientific and technological research and development activities and requirements of the public and private sectors, including transferring technological advances to the private sector; (v) expand knowledge pertaining to scientific and technological research and development among public and private entities; (vi) attract research and development (R&D) facilities and contracts from the federal government and private sector, including coordinating efforts to identify and compete for large federal and private sector R&D facilities, tracking federal technology initiatives and recommending state actions, and developing a statewide strategy to compete for large R&D contracts; and (vii) facilitate and coordinate the marketing, organization, utilization and development of scientific and technological research and development in the Commonwealth.

B. To achieve the objectives of subsection A, there is created and constituted a political subdivision of the Commonwealth to be known as "The Innovation and Entrepreneurship Investment Authority." The Authority's exercise of powers conferred by this article shall be deemed to be the performance of an essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

1984, c. 782, § 9-252; 1993, c. 967; 2001, c. 844; 2009, cc. 325, 810.

§ 2.2-2220. Board of directors; members; President

The Authority shall be governed by a board of directors consisting of 17 members appointed as follows: (i) two presidents of the major research state institutions of higher education, and one president representing the other state institutions of higher education, appointed by the Governor; (ii) three nonlegislative citizen members appointed by the Governor; (iii) eight nonlegislative citizen members appointed by the General Assembly as follows: four nonlegislative citizen members appointed by the Speaker of the House from a list recommended by the House Committee on Science and Technology and the Joint Commission on Technology and Science and four nonlegislative citizen members appointed by the Senate Committee on Rules from a list recommended by the Senate Committee on General Laws and Technology and the Joint Commission on Technology and Science; and (iv) the Secretary of Technology, the Secretary of Commerce and Trade, and the Secretary of Education, who shall serve ex officio with full voting privileges.

One nonlegislative citizen member appointed by the Governor, one nonlegislative citizen member appointed by the Speaker of the House, and one nonlegislative citizen member appointed by the Senate Committee on Rules shall each have experience as a founding member of a technology company based upon intellectual property that has secured private investment capital. One nonlegislative citizen member appointed by the Governor, one nonlegislative citizen member appointed by the Speaker of the House, and one nonlegislative citizen member appointed by the Senate Committee on Rules shall each have experience as an institutional venture capital investment partner. One nonlegislative citizen member appointed by the Governor, one nonlegislative

citizen member appointed by the Speaker of the House, and one nonlegislative citizen member appointed by the Senate Committee on Rules shall each have experience as a senior executive in a technology or scientific research and development company with annual revenues in excess of $5 million. One nonlegislative citizen member appointed by the Governor, one nonlegislative citizen member appointed by the Speaker of the House and one nonlegislative citizen member appointed by the Senate Committee on Rules shall be from rural areas of the Commonwealth.

The Secretary of Technology, Secretary of Commerce and Trade, and Secretary of Education shall serve terms coincident with their terms of office. After the initial staggering of terms, nonlegislative citizen members and presidents shall be appointed for terms of two years. Vacancies in the membership of the Board shall be filled in the same manner as the original appointments for the unexpired portion of the term. No nonlegislative citizen member or president shall be eligible to serve for more than three successive two-year terms; however, after the expiration of a term of one year, or after the expiration of the remainder of a term to which appointed to fill a vacancy, three additional terms may be served by such member if appointed thereto. Members of the Board shall be subject to removal from office in like manner as are state, county, town and district officers under the provisions of §§ 24.2-230 through 24.2-238. Immediately after appointment, the members of the Board shall enter upon the performance of their duties.

The Board shall annually elect from among its members a chairman and a vice-chairman. The Board shall also elect annually a secretary, who need not be a member of the Board, and may also elect such other subordinate officers who need not be members of the Board, as it deems proper. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the Board. In the absence of both the chairman and vice-chairman, the Board shall appoint a chairman pro tempore, who shall preside at such meetings. Nine members shall constitute a quorum of the Board.

The Board shall employ a President of the Authority, who shall serve at the pleasure of the Board, to direct the day-to-day operations and activities of the Authority and carry out such of the powers and duties conferred upon him by the Board. The President and employees of the Authority shall be compensated in the manner provided by the Board and shall not be subject to the provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.).

1984, c. 782, § 9-253; 1993, c. 967; 1999, cc. 412, 421, 433; 2001, c. 844; 2005, c. 439; 2008, cc. 299, 611; 2009, cc. 325, 810; 2011, cc. 816, 874; 2015, cc. 685, 687.

§ 2.2-2220.1. Research and Technology Investment Advisory Committee

A. The Authority shall be advised by the Research and Technology Investment Advisory Committee (the Advisory Committee). The Advisory Committee shall be administered by the Authority and consist of 10 members as follows: the four vice-provosts of research at major state institutions of higher education from the state institutions of higher education not represented on the Authority, the president and chief executive officer of the Virginia Economic Development Partnership, and five citizen members appointed as follows: (i) the Speaker of the House of Delegates

shall appoint one citizen who shall have experience in financing emerging technology businesses and one citizen who shall be a representative of an engineering firm, (ii) the Senate Committee on Rules shall appoint one citizen who shall be a representative of an engineering firm and one citizen who shall represent an independent or federal research facility in the Commonwealth, and (iii) the Governor shall appoint one citizen who shall represent a technology company with significant operations in the Commonwealth. A vice-provost of a state institution shall serve until the president of the institution that he represents is appointed to serve on the Authority, at which time the vice-provost of the state institution no longer represented on the Authority shall become a member of the Advisory Committee. Citizen members shall be appointed for terms of four years. A citizen member may be appointed for successive terms.

B. The Advisory Committee shall assist the Authority in reviewing applications for awards from the Commonwealth Research Commercialization Fund pursuant to § 2.2-2233.1 and make recommendations to the Authority concerning the awards. In reviewing the applications, the Advisory Committee shall only recommend for award those applications that, based upon the Commonwealth Research and Technology Strategic Roadmap and in the opinion of the Advisory Committee, (i) are based upon sound scientific principles and present an opportunity for valid research, (ii) relate to a key industry sector identified in the Commonwealth Research and Technology Strategic Roadmap as an area of focus for technology investment in the Commonwealth, and (iii) present a significant potential for commercialization in the Commonwealth. In the case of an application for an award from the eminent researcher recruitment program pursuant to subdivision D 5 of § 2.2-2233.1, the Advisory Committee shall only consider researchers who conduct viable research with significant potential for commercialization in an area related to a key industry sector identified in the Strategic Roadmap as an area of focus for technology investment in the Commonwealth.

2011, cc. 816, 874; 2012, c. 372; 2015, c. 490.

§ 2.2-2221. Powers of the Authority

The Authority is granted all powers necessary or convenient for the carrying out of its statutory purposes, including, but not limited to, the following rights and powers to:

1. Sue and be sued, implead and be impleaded, complain and defend in all courts.

2. Adopt, use, and alter at will a corporate seal.

3. Acquire, purchase, hold, use, lease or otherwise dispose of any project and property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority, and, without limitation of the foregoing, to lease as lessee, any project and any property, real, personal or mixed, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board and to lease as lessor to any person, any project and any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at

such annual rental and on such terms and conditions as may be determined by the Board, and to sell, transfer or convey any property, real, personal or mixed, tangible or intangible or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the board of the Authority.

4. Plan, develop, undertake, carry out, construct, improve, rehabilitate, repair, furnish, maintain, and operate projects.

5. Adopt bylaws for the management and regulation of its affairs.

6. Establish and maintain satellite offices within the Commonwealth.

7. Fix, alter, charge, and collect rates, rentals, and other charges for the use of projects of, or for the sale of products of or for the services rendered by, the Authority, at rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority, the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties, the payment of the costs accomplishing its purposes set forth in § 2.2-2219, the payment of the principal of and interest on its obligations, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such obligations.

8. Borrow money, make and issue bonds including bonds as the Authority may determine to issue for the purpose of accomplishing the purposes set forth in § 2.2-2219 or of refunding bonds previously issued by the Authority, and to secure the payment of all bonds, or any part thereof, by pledge or deed of trust of all or any of its revenues, rentals, and receipts or of any project or property, real, personal or mixed, tangible or intangible, or any interest therein, and to make agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the Authority deems advisable, and in general to provide for the security for the bonds and the rights of holders thereof.

9. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes and the execution of its powers under this article, including agreements with any person or federal agency.

10. Employ, in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers and such other employees and agents as may be necessary, and to fix their compensation to be payable from funds made available to the Authority.

11. Receive and accept from any federal or private agency, foundation, corporation, association or person grants to be expended in accomplishing the objectives of the Authority, and to receive and accept from the Commonwealth or any state, and any municipality, county or other political subdivision thereof and from any other source, aid or contributions of either money, property, or

other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be made.

12. Render advice and assistance, and to provide services, to institutions of higher education and to other persons providing services or facilities for scientific and technological research or graduate education, provided that credit towards a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia.

13. Develop, undertake and provide programs, alone or in conjunction with any person or federal agency, for scientific and technological research, technology management, continuing education and in-service training, provided that credit towards a degree, certificate or diploma shall be granted only if such education is provided in conjunction with an institution of higher education authorized to operate in Virginia; to foster the utilization of scientific and technological research information, discoveries and data and to obtain patents, copyrights and trademarks thereon; to coordinate the scientific and technological research efforts of public institutions and private industry and to collect and maintain data on the development and utilization of scientific and technological research capabilities. The universities set forth in § 2.2-2220 shall be the principal leading universities in the research institutes.

14. Pledge or otherwise encumber all or any of the revenues or receipts of the Authority as security for all or any of the obligations of the Authority.

15. Receive, administer, and market any interest in patents, copyrights and materials that were potentially patentable or copyrightable developed by or for state agencies, public institutions of higher education and political subdivisions of the Commonwealth. The Authority shall return to the agency, institution or political subdivision any revenue in excess of its administrative and marketing costs. When general funds are used to develop the patent or copyright or material that was potentially patentable or copyrightable, any state agency, except a public institution of higher education in Virginia, shall return any revenues it receives from the Authority to the general fund unless the Governor authorizes a percentage of the net royalties to be shared with the developer of the patented, copyrighted, or potentially patentable or copyrightable property.

16. Develop the Commonwealth Research and Technology Strategic Roadmap, pursuant to § 2.2-2221.2 for the Commonwealth to use to identify research areas worthy of institutional focus and Commonwealth investment in order to promote commercialization and economic development efforts in the Commonwealth.

17. Foster innovative partnerships and relationships among the Commonwealth, the Commonwealth's state institutions of higher education, the private sector, federal labs, and not-for-profit organizations to improve research and development commercialization efforts.

18. Receive and review annual reports from state institutions of higher education regarding the progress of projects funded through the Commonwealth Research Initiative or the Commonwealth

Research and Commercialization Fund. The Authority shall develop guidelines, methodologies, and criteria for the reports. The Authority shall aggregate the reports and submit an annual omnibus report on the status of research and development initiatives in the Commonwealth to the Governor and the chairmen of the Senate Finance Committee, the House Appropriations Committee, the Senate Committee on General Laws and Technology, the House Committee on Science and Technology, and the Joint Commission on Technology and Science.

19. In consultation with the Secretary of Technology, develop guidelines for the application, review, and award of funds from the Commonwealth Research Commercialization Fund pursuant to § 2.2-2233.1. These guidelines shall address, at a minimum, the application process and shall give special emphasis to fostering collaboration between institutions of higher education and partnerships between institutions of higher education and business and industry.

20. Exclusively, or with any other person, form and otherwise develop, own, operate, govern, and otherwise direct the disposition of assets of, or any combination thereof, separate legal entities, on any such terms and conditions and in any such manner as may be determined by the Board, provided that such separate legal entities shall be formed solely for the purpose of managing and administering any assets disposed of by the Authority. These legal entities may include limited liability companies, limited partnerships, charitable foundations, real estate holding companies, investment holding companies, nonstock corporations, and benefit corporations. Any entities created by the Authority shall be operated under the governance of the Authority. The Board shall be provided with quarterly performance reports for all governed entities. The articles of incorporation, partnership, or organization for these entities shall provide that, upon dissolution, the assets of the entities that are owned on behalf of the Commonwealth shall be transferred to the Authority. The legal entity shall ensure that the economic benefits attributable to the income and property rights arising from any transactions in which the entity is involved are allocated on a basis that is equitable in the reasonable business judgment of the Board, with due account being given to the interest of the citizens of the Commonwealth and the needs of the formed entity. No legal entity shall be deemed to be a state or governmental agency, advisory agency, or public body or instrumentality. No director, officer, or employee of any such entity shall be deemed to be an officer or employee for purposes of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). Notwithstanding the foregoing, the Auditor of Public Accounts or his legally authorized representatives shall annually audit the financial accounts of the Authority and any such entity, provided that the working papers and records of the Auditor of Public Accounts relating to such audits shall not be subject to the provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

21. Do all acts and things necessary or convenient to carry out the powers granted to it by law.

1984, c. 782, § 9-254; 1985, c. 502; 2001, c. 844; 2009, cc. 325, 810; 2010, c. 630; 2011, cc. 816, 874; 2015, cc. 490, 685, 687.

§ 2.2-2221.01. Designation of staff of Center for Innovative Technology

The Board of the Authority may designate the President and staff of the Center for Innovative Technology to carry out the day-to-day operations and activities of the Authority and to perform such other duties as may be directed by the Board.

2008, cc. 70, 610.

§ 2.2-2221.1. Reporting and transparency requirement for the Center for Innovative Technology

A. The president of the Center for Innovative Technology shall report annually to the Joint Commission on Technology and Science, created pursuant to § 30-85, regarding a review of the Center's initiatives and projects, its work plan for the year and the expected results therefrom, and an overview of the results that it has achieved to date, to assist the Commission in its effort to stimulate, encourage, and promote the development of technology and science in the Commonwealth and sound public policies related thereto.

B. No later than July 15 of each year, the Innovation and Entrepreneurship Investment Authority shall provide to the Chairmen of the House Appropriations and Senate Finance Committees, the Secretary of Technology, and the Director of the Department of Planning and Budget a report of its operating plan for each year of the biennium. Within three months after the end of the fiscal year, the Center shall submit to the same persons a detailed expenditure report for the concluded fiscal year. Both reports shall be prepared in the format as approved by the Director of the Department of Planning and Budget and include, but not be limited to, the following:

1. All planned and actual revenue and expenditures along with funding sources, including state, federal, and other revenue sources, of both the Innovation and Entrepreneurship Investment Authority and the Center for Innovative Technology;

2. A listing of the salaries, bonuses, and benefits of all employees of the Innovation and Entrepreneurship Investment Authority and the Center for Innovative Technology;

3. By program, total grants made and investments awarded for each grant and investment program, to include the Commonwealth Research Commercialization Fund;

4. By program, the projected economic impact on the Commonwealth and recoveries of previous grants or investments and sales of equity positions; and

5. Cash balances by funding source, and report, by program, available, committed, and projected expenditures of all cash balances.

C. The president of the Center for Innovative Technology shall report quarterly to the Center's board of directors, the Chairmen of the House Appropriations and Senate Finance Committees, the Secretary of Technology, and the Director of the Department of Planning and Budget in a format approved by the Board the following:

1. The quarterly financial performance, determined by comparing the budgeted and actual revenues and expenditures with planned revenues and expenditures for the fiscal year;

2. All investments and grants executed compared with projected investment closings and the return on prior investments and grants including all gains and losses; and

3. The financial and programmatic performance of all operating entities owned by the Center.

D. The president of the Center for Innovative Technology shall provide an annual report describing key programs and their economic performance for the Commonwealth in a format understandable by the citizens of the Commonwealth and available on the Center's website.

2001, c. 57, § 9-254.1; 2015, cc. 685, 687.

§ 2.2-2221.2. Commonwealth Research and Technology Strategic Roadmap

A. The Authority shall develop the Commonwealth Research and Technology Strategic Roadmap (the Roadmap), a comprehensive research and technology strategic roadmap for the Commonwealth to identify research areas worthy of economic development and institutional focus. The goal of the Roadmap shall be to develop a cohesive and comprehensive framework through which to encourage collaboration between the Commonwealth's institutions of higher education, private sector industries, and economic development entities in order to focus on the complete life cycle of research, development, and commercialization. The framework shall serve as a means to (i) identify the Commonwealth's key industry sectors in which investments in technology should be made by the Commonwealth, which may include but are not limited to the fields of energy, conservation, environment, microelectronics, robotics and unmanned vehicle systems, advanced shipbuilding, or lifespan biology and medicine, (ii) identify basic and applied research opportunities in these sectors that exhibit commercial promise, (iii) encourage commercialization and economic development activities in the Commonwealth in these sectors, and (iv) help ensure that investments in basic and applied research are made prudently in focused areas for projects with significant potential for commercialization and economic growth in the Commonwealth. In developing the Roadmap, the Authority shall:

1. Review the strategic plan for each research university in the Commonwealth to identify common themes;

2. Catalog the Commonwealth's assets in order to identify the areas of research and development in which the Commonwealth has a great likelihood of excelling in applied research and commercialization;

3. Make recommendations for the alignment of research and development and economic growth in the Commonwealth, identifying the industry sectors in which the Commonwealth should focus its research, development, investment, and economic development efforts;

4. Establish a process for maintaining an inventory of the Commonwealth's current research and development endeavors in both the public and private sector that can be used to attract research and commercialization excellence in the Commonwealth;

5. Make recommendations to the Six-Year Capital Outlay Plan Advisory Committee established pursuant to § 2.2-1516 regarding capital construction needs at state institutions of higher education necessary to excel in basic and applied research in identified industry sectors; and

6. Develop a policy regarding the ownership and licensing of intellectual property developed through the use of awards from the Commonwealth Research Commercialization Fund.

B. In developing the Roadmap, the Authority shall solicit feedback from the Research and Technology Investment Advisory Committee; public and private institutions of higher education in the Commonwealth; federal research and development assets in the Commonwealth including but not limited to NASA Langley Research Center, the Naval Surface Warfare Center, Dahlgren Division, and the Thomas Jefferson National Accelerator Facility (Jefferson Lab); regional technology councils in the Commonwealth; and the private sector.

C. The Authority shall review and update the Roadmap at least once every three years.

D. The Authority shall submit the Roadmap, and any subsequent updates, to the Governor and the chairmen of the Senate Finance Committee, the House Appropriations Committee, the Senate Committee on General Laws and Technology, the House Committee on Science and Technology, and the Joint Commission on Technology and Science.

2011, cc. 816, 874.

§ 2.2-2222. Form, terms, execution and sale of bonds; use of proceeds; interim receipts or temporary bonds; lost or destroyed bonds; faith and credit of state and political subdivisions not pledged; expenses

The bonds of each issue shall be dated, shall bear interest at such rates as shall be fixed by the Authority, shall mature at such time not exceeding forty years from their date as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of bonds and their manner of execution, and shall fix the denomination of the bonds and the place of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. The bonds shall be signed by the chairman or vice-chairman of the Authority, or if so authorized by the Authority, shall bear his facsimile signature, and the official seal of the Authority, or, if so authorized by the Authority, a facsimile signature thereof shall be impressed or imprinted thereon and attested by the secretary or any assistant secretary of the Authority, or, if so authorized by the Authority, with the facsimile signature of such secretary or assistant secretary. Any coupons attached to bonds issued by the Authority shall bear the signature of the chairman or vice-chairman of the Authority or a facsimile thereof. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery

and any bonds may bear the facsimile signature of, or may be signed by, such persons as at the actual time of the execution of such bonds shall be the proper officers to sign such bonds although at the date of such bonds such persons may not have been such officers. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine will best effect the purposes of this article.

The proceeds of the bonds of each issue shall be used solely for the purposes, and in furtherance of the powers, of the Authority as may be provided in the resolution authorizing the issuance of such bonds or in the trust agreement authorized by § 2.2-2223 securing the bonds.

In addition to the above powers, the Authority may issue interim receipts or temporary bonds as provided in § 15.2-2616 and to execute and deliver new bonds in place of bonds mutilated, lost or destroyed, as provided in § 15.2-2621.

No obligation of the Authority shall be deemed to constitute a debt, or pledge of the faith and credit, of the Commonwealth or of any political subdivision thereof, but shall be payable solely from the revenue and other funds of the Authority pledged thereto. All such obligations shall contain on the face thereof a statement to the effect that the Commonwealth, political subdivisions thereof and the Authority shall not be obligated to pay the same or the interest thereon except from revenues and other funds of the Authority pledged thereto, and that neither the faith and credit nor the taxing power of the Commonwealth or of any political subdivision thereof is pledged to the payment of the principal of or the interest on such obligations.

All expenses incurred in carrying out the provisions of this article shall be payable solely from funds provided under the provisions of this article and no liability shall be incurred by the Authority beyond the extent to which moneys have been provided under the provisions of this article.

1984, c. 782, § 9-255; 2001, c. 844.

§ 2.2-2223. Trust agreement securing bonds

In the discretion of the Authority any bonds issued under the provisions of this article may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. The trust agreement or the resolution providing for the issuance of the bonds may (i) pledge or assign the revenues to be received and provide for the mortgage of any project or property or any part thereof and (ii) contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the planning, development, acquisition, construction, rehabilitation, establishment,

improvement, extension, enlargement, maintenance, repair, operation and insurance of the project in connection with which the bonds have been authorized, the rates and fees to be charged, the custody, safeguarding and application of all moneys, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenue to furnish the indemnifying bonds or to pledge the securities required by the Authority. Any trust agreement may set forth the rights of action by bondholders. In addition to the foregoing, any trust agreement or resolution may contain such other provisions as the Authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of the trust agreement or resolution may be treated as a part of the cost of the operation of the project or projects.

1984, c. 782, § 9-256; 2001, c. 844.

§ 2.2-2224. Moneys received deemed trust funds

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The resolution authorizing the bonds of any issue or the trust agreement securing such bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys shall be deposited shall act as a trustee of such moneys and shall hold and apply the same for the purposes hereof, subject to the regulations as this article and the resolution or trust agreement may provide.

1984, c. 782, § 9-257; 2001, c. 844.

§ 2.2-2225. Proceedings by bondholder or trustee to enforce rights

Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the trust agreement or the resolution authorizing the issuance of such bonds, may either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under the trust agreement or resolution, and may enforce and compel the performance of all duties required by this article or by the trust agreement or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging, and collecting of rates, rentals, and other charges.

1984, c. 782, § 9-258; 2001, c. 844.

§ 2.2-2226. Bonds made securities for investment and deposit

Bonds issued by the Authority under the provisions of this article shall be securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds shall be securities that may properly and legally be

deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may be authorized by law.

1984, c. 782, § 9-259; 2001, c. 844.

§ 2.2-2227. Revenue refunding bonds; bonds for refunding and for cost of additional projects

The Authority may provide for the issuance of revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding that have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of the bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions, or enlargements of the project or projects in connection with which the bonds to be refunded shall have been issued. The Authority may provide by resolution for the issuance of its revenue bonds for the combined purpose of (i) refunding any bonds then outstanding which shall have been issued under the provisions of this article, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of the bonds, and (ii) paying all or any part of the cost of any additional project or any portion thereof. The issuance of the bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority in respect of the same shall be governed by the provisions of this article insofar as they may be applicable.

1984, c. 782, § 9-260; 2001, c. 844.

§ 2.2-2228. Grants or loans of public or private funds

The Authority may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant or loan or both or otherwise, to accomplish, in whole or in part, any of the purposes of this article. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth.

1984, c. 782, § 9-261; 2001, c. 844.

§ 2.2-2229. Moneys of Authority; examination of books by the Auditor of Public Accounts

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other order of the treasurer of the Authority or of other persons as the Authority may authorize to execute such warrants or orders. The Auditor of

Public Accounts or his legally authorized representatives, shall examine the accounts and books of the Authority.

1984, c. 782, § 9-265; 2001, c. 844.

§ 2.2-2230. Exemption from taxes or assessments

The exercise of the powers granted by this article shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of projects by the Authority and the undertaking of activities in furtherance of the purpose of the Authority constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the Authority under the provisions of this article or upon the income therefrom, including sales and use taxes on tangible personal property used in the operations of the Authority, and any bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from state and local taxation. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of a facility businesses for which local or state taxes would otherwise be required.

1984, c. 782, § 9-262; 2001, c. 844.

§ 2.2-2231. Exemption of Authority from personnel and procurement procedures

The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) of and the Virginia Public Procurement Act (§ 2.2-4300 et seq.) of this title shall not apply to the Authority in the exercise of any power conferred under this article.

1984, c. 782, § 9-264; 2001, c. 844.

§ 2.2-2232. Auxiliaries

A. The Governor may provide for the formation of a nonstock corporation to carry out the purpose of this article. The board of directors of the nonstock corporation shall consist of the fifteen members of the Board of the Authority. The articles of incorporation of the nonstock corporation shall provide that upon dissolution the net assets of the corporation shall be transferred to the Commonwealth. The nonstock corporation shall ensure that the economic benefits attributable to the income and property rights arising from any transactions in which the nonstock corporation is involved are allocated on a basis that is equitable in the reasonable business judgment of the board of directors, with due account being given to the interest of the citizens of the Commonwealth and the needs of the nonstock corporation. Any such nonstock corporation shall not be deemed to be a state or governmental agency, advisory agency, public body or agency or instrumentality for purposes of Chapters 8 (§ 2.2-800 et seq.), 18 (§ 2.2-1800 et seq.), 24 (§ 2.2-2400 et seq.), 29 (§ 2.2-2900 et seq.), 31 (§ 2.2-3100 et seq.), 37 (§ 2.2-3700 et seq.), 38 (§ 2.2-3800 et seq.), 43 (§ 2.2-4300 et seq.), 44 (§ 2.2-4400 et seq.), 45 (§ 2.2-4500 et seq.), 46 (§ 2.2-4600 et seq.), and 47 (§ 2.2-4700 et seq.) of this title, Chapter 14 (§ 30-130 et seq.) of Title 30 or Chapter

1 (§ 51.1-124.1 et seq.) of Title 51.1. No director, officer or employee of any such nonstock corporation or entity be shall deemed to be an officer or employee for purposes of Chapter 31 (§ 2.2-3100 et seq.) of this title. Notwithstanding the foregoing, the Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the financial accounts of the Authority and any such nonstock corporation entity, provided that the working papers and files of the Auditor of Public Accounts relating to such audits shall not be subject to the provisions of The Freedom of Information Act (§ 2.2-3700 et seq.).

B. (Effective until October 1, 2016) Notwithstanding the provisions of subsection A, as an entity receiving state funds, any such nonstock corporation shall be subject to periodic external review either (i) under the provisions of the Legislative Program Review and Evaluation Act (§ 30-64 et seq.) or (ii) by an entity appointed for that purpose by the Governor. Any such nonstock corporation shall be deemed to be an institution of higher education within the meaning of §§ 23-3.1 and 23-9.2, but only for the limited purposes therein stated.

B. (Effective October 1, 2016) Notwithstanding the provisions of subsection A, as an entity receiving state funds, any such nonstock corporation shall be subject to periodic external review either (i) under the provisions of the Legislative Program Review and Evaluation Act (§ 30-64 et seq.) or (ii) by an entity appointed for that purpose by the Governor. Any such nonstock corporation shall be deemed to be an institution of higher education within the meaning of §§ 23.1-101 and 23.1-103, but only for the limited purposes therein stated.

1984, c. 782, § 9-263; 1987, Sp. Sess., c. 1; 1993, c. 967; 2001, c. 844.

§ 2.2-2233. Advanced Communications Assistance Fund created; purposes

A. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is created in the state treasury a special nonreverting, permanent fund, to be known as the Advanced Communications Assistance Fund ("the Fund"), to be administered by the Authority. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which may consist of grants or loans, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request bearing the signature of the chairman or the vice-chairman of the Authority, or, if so authorized by the Authority, bearing his facsimile signature, and the official seal of the Authority.

B. Moneys in the Fund shall be used solely for the purpose of helping underserved localities in the Commonwealth take full advantage of advanced communications services. Loans or grants from the Fund shall be used in underserved localities for (i) the internal communication needs of such localities, which may include but are not limited to fiber-optic, satellite, and wireless com-

munications networks, or (ii) help in financing the costs of planning, designing, purchasing, leasing, installing, or maintaining dark fiber to the extent permitted in § 15.2-1500.

C. For purposes of this section:

"Dark fiber" means fiber optic cable that is not lighted by lasers or other electronic equipment.

"Underserved locality" means a locality wherein advanced communication services are not readily and generally available from three or more nonaffiliated certificated local exchange companies.

1999, c. 924, § 9-265.1; 2001, c. 844.

§ 2.2-2233.1. Commonwealth Research Commercialization Fund; continued; purposes; report

A. For purposes of this section:

"Guidelines" means guidelines developed in consultation with the Secretary of Technology and published by the Authority regarding the administration of the Commonwealth Research Commercialization Fund.

"Qualified research and technologies" means research programs or technologies identified in the Commonwealth Research and Technology Strategic Roadmap as areas of focus for technology investment in the Commonwealth, which may include but are not limited to the fields of energy, conservation, environment, microelectronics, robotics and unmanned vehicle systems, advanced shipbuilding, or lifespan biology and medicine.

(Effective until October 1, 2016) "Qualifying institution" means (i) a public or private institution of higher education in the Commonwealth or its associated intellectual property foundation that adopts a policy regarding the ownership, protection, assignment, and use of intellectual property pursuant to subsection A of § 23-4.3 or (ii) a federal research facility located in the Commonwealth.

(Effective October 1, 2016) "Qualifying institution" means (i) a public or private institution of higher education in the Commonwealth or its associated intellectual property foundation that adopts a policy regarding the ownership, protection, assignment, and use of intellectual property pursuant to subdivision B 13 of § 23.1-1303 or (ii) a federal research facility located in the Commonwealth.

"SBIR" means the Small Business Innovation Research Program authorized under 15 U.S.C. § 638.

"STTR" means the Small Business Technology Transfer Program authorized under 15 U.S.C. § 638.

B. From such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources, there is created in the state treasury a special nonreverting, permanent fund, to be known as the Commonwealth Research Commercialization Fund (the Fund), to be administered by the Authority pursuant to the guidelines. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the

Fund and be credited to it. Any moneys remaining in the Fund at the end of each fiscal year, including interest thereon, shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund, which may consist of grants or loans, shall be made by the State Treasurer on warrants issued by the Comptroller upon written request bearing the signature of the chairman or the vice-chairman of the Authority, or, if so authorized by the Authority, bearing his facsimile signature, and the official seal of the Authority.

C. Awards from the Fund shall be made by the Authority, pursuant to the guidelines and upon the recommendation of the Research and Technology Investment Advisory Committee. Awards from the Fund shall only be made to applications that further the goals set forth in the Commonwealth Research and Technology Strategic Roadmap.

D. Awards from the Fund may be granted for the following programs:

1. For fiscal years beginning with a Fund balance of less than $7 million, an SBIR matching funds program for Virginia-based technology businesses. Businesses meeting the following criteria shall be eligible to apply for an award:

a. The applicant has received a Phase I SBIR award from the National Institute of Health targeted at the development of qualified research or technologies;

b. The applicant employs fewer than 12 full-time employees;

c. At least 51 percent of the applicant's employees reside in Virginia; and

d. At least 51 percent of the applicant's property is located in Virginia.

The length of time that a business has been incorporated shall have no bearing on an applicant's eligibility for an award. Applicants shall be eligible for matching grants of up to $50,000 of the Phase I award. All applicants shall be required to submit a commercialization plan with their application.

2. For fiscal years beginning with a Fund balance of $7 million or greater, an SBIR and STTR matching funds program for Virginia-based technology businesses. Businesses meeting the following criteria shall be eligible to apply for an award:

a. The applicant has received an SBIR or STTR award targeted at the development of qualified research or technologies;

b. The applicant employs fewer than 12 full-time employees;

c. At least 51 percent of the applicant's employees reside in Virginia; and

d. At least 51 percent of the applicant's property is located in Virginia.

The length of time that a business has been incorporated shall have no bearing on an applicant's eligibility for an award. Applicants shall be eligible for matching grants of up to $100,000 for

Phase I awards and up to $500,000 for Phase II awards. All applicants shall be required to submit a commercialization plan with their application.

3. A matching funds program to assist qualifying institutions and other research institutions in leveraging federal and private funds designated for the commercialization of qualified research or technologies. The chairman of the Authority is authorized to issue letters of financial commitment to assist applicants in leveraging federal and private funds.

4. A commercialization program to incentivize the commercialization of a product or service related to a qualifying technology. An eligible applicant shall have operations in the Commonwealth, and the project proposed by the applicant shall:

a. Commercialize a product or service related to a qualifying technology;

b. Have a demonstrable economic development benefit to the Commonwealth;

c. Match the award, on at least a one-to-one basis, from other available funds, including funds from an institution of higher education collaborating on the project; and

d. Have a reasonable probability of enhancing the Commonwealth's national and global competitiveness.

Priority shall be given to those applications that propose projects that (i) are collaborative between private and nonprofit entities, public or private agencies, and qualifying institutions or research institutions; (ii) project a short time to commercialization, although transformative projects with a longer projected time to commercialization shall not be discounted; (iii) have active third-party equity holders; (iv) have technology and management in place that are likely to successfully bring the product or service to the marketplace; or (v) are from applicants who have a history of successful projects funded by the Fund. The length of time that a business has been incorporated shall have no bearing on an applicant's eligibility for an award.

5. An eminent researcher recruitment program to acquire and enhance research superiority at public qualifying institutions. For purposes of applications pursuant to this subdivision, the applicant shall be a state institution of higher education. In order to qualify for an award, the applicant shall:

a. Demonstrate that the researcher being recruited would create research superiority at the institution;

b. Demonstrate that the institution making the application has sufficient technology transfer processes and other research capabilities in place to meet the needs of the researcher being recruited;

c. Involve a private sector partner with business operations in the Commonwealth;

d. Demonstrate that the research conducted by the researcher is in a qualifying technology; and

e. Match the award, on at least a one-to-one basis, with 50 percent of the match from the applicant and 50 percent of the match from the private sector partner.

E. Any application for an award from the Fund shall include a strategic plan that, at a minimum, identifies (i) how the proposed project fits into the Commonwealth Research and Technology Strategic Roadmap, (ii) other funds that may be reasonably expected from other sources as a result of an award from the Fund, (iii) the potential for commercialization of the research or technology underlying the application, and (iv) opportunities for public and private collaboration.

F. No award shall be made from the Fund until a performance agreement or memorandum of understanding is agreed to by the Authority and the recipient of the award memorializing the terms and conditions of the award. Such agreement or memorandum of understanding shall set forth any conditions for receipt of the award, any dates certain for the completion of certain acts by the recipient, and provisions for the repayment of any award, including the rate of interest to be charged if any, if the recipient does not meet the terms of the agreement. In the event that an award is to be made over a multi-year period, the performance agreement or memorandum of understanding shall establish certain benchmarks or performance standards against which to measure the interim success of the project before additional funds are disbursed from the Fund.

G. The chairman of the Authority shall provide the Governor and the General Assembly with an annual report to include a detailed list of awards and loans committed, the amount of each approved award or loan, a description of the approved proposals, and the amount of federal or private matching funds anticipated where applicable, a statement concerning how the approved proposals further the goals of the Commonwealth Research and Technology Strategic Roadmap, and an assessment of the effectiveness of the Fund.

H. Administrative expenses related to implementing the guidelines and review process may be reimbursed from the Fund.

2003, c. 362; 2008, cc. 63, 527; 2009, cc. 243, 325, 810, 853; 2011, cc. 816, 874; 2015, c. 490; 2016, c. 441.

§ 2.2-2233.2. Repealed

Repealed by Acts 2011, cc. 816 and 874, cl. 5, effective April 6, 2011.

Article 4 - VIRGINIA ECONOMIC DEVELOPMENT PARTNERSHIP AUTHORITY

§ 2.2-2234. Short title; declaration of public purpose; Authority created

A. This article shall be known and may be cited as the "Virginia Economic Development Partnership Act."

B. The General Assembly has determined that there exists in the Commonwealth a need to encourage, stimulate and support the development and expansion of the economy of the Commonwealth through economic development.

C. To achieve the objective of subsection B, there is created a political subdivision of the Commonwealth to be known as the Virginia Economic Development Partnership Authority. The Authority's exercise of powers and duties conferred by this article shall be deemed the performance of an

essential governmental function and matters of public necessity for which public moneys may be spent and private property acquired.

1995, c. 638, §§ 2.1-548.26, 2.1-548.28; 2001, c. 844.

§ 2.2-2235. Board of directors; members and officers; Chief Executive Officer

The Authority shall be governed by a board of directors consisting of the Lieutenant Governor, the Secretary of Agriculture and Forestry, the Secretary of Commerce and Trade, the Secretary of Finance, the Secretary of Technology, and the Chancellor of the Virginia Community College System, or their designees, serving as ex officio, voting members, and 18 members to be appointed as follows: (i) one from each congressional district in the Commonwealth and one citizen at large, appointed by the Governor, subject to confirmation by the General Assembly; (ii) four citizens at large appointed by the Speaker of the House; and (iii) two citizens at large appointed by the Senate Committee on Rules. The six citizens appointed by the General Assembly shall reside in regions of the Commonwealth that have a higher unemployment rate than that of the statewide average unemployment rate as reported by the Virginia Employment Commission for the preceding four years from the date of appointment. Ex officio members of the Board shall serve terms coincident with their terms of office. Four of the 12 directors initially appointed by the Governor shall be appointed for terms of two and one-half years, three for terms of four and one-half years, and five for terms of six and one-half years, from the effective date of their appointment; and thereafter the terms of members of the Board shall be six years. No member shall be eligible to serve more than two terms; however, after the expiration of the term of a member appointed to serve three years or less, two additional terms may be served if appointed thereto. Any appointment to fill a vacancy shall be for the unexpired term. A person appointed to fill a vacancy may be appointed to serve two additional terms. Members of the Board shall receive their expenses and shall be compensated at the rate provided in § 2.2-2104 for each day spent on the business of the Board.

The Board shall elect from its membership a chairman and a vice-chairman, and shall also elect a secretary and a treasurer, who need not be members of the Board, and may also elect other subordinate officers, who need not be members of the Board. The Board may also form committees and advisory councils, which may include representatives who are not members of the Board, to undertake more extensive study and discussion of the issues before the Board.

A majority of the Board shall constitute a quorum for the transaction of the Authority's business, and no vacancy in the membership shall impair the right of a quorum to exercise the rights and perform all duties of the Authority.

The Board shall appoint the chief executive officer of the Authority, who shall not be a member of the Board, whose title shall be President and Chief Executive Officer and may be referred to as the President or as the Chief Executive Officer, and who shall serve at the pleasure of the Board and carry out such of the powers and duties conferred upon him by the Board.

1995, c. 638, § 2.1-548.31; 2001, c. 844; 2005, c. 900; 2008, c. 787; 2009, cc. 374, 569; 2010, cc. 101, 869; 2012, cc. 47, 259.

§ 2.2-2236. Powers and duties of the Chief Executive Officer

The Chief Executive Officer shall employ or retain such agents or employees subordinate to the Chief Executive Officer as may be necessary to fulfill the duties of the Authority conferred upon the Chief Executive Officer, subject to the Board's approval. Employees of the Authority shall be eligible for membership in the Virginia Retirement System and participation in all of the health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law. The Chief Executive Officer shall also exercise such of the powers and duties relating to the direction of the Commonwealth's economic development efforts conferred upon the Authority as may be delegated to him by the Board, including powers and duties involving the exercise of discretion. The Chief Executive Officer shall also exercise and perform such other powers and duties as may be lawfully delegated to him or as may be conferred or imposed upon him by law.

1995, c. 638, § 2.1-548.32; 1996, cc. 590, 598; 1998, c. 359; 2001, c. 844; 2010, c. 869.

§ 2.2-2237. Powers of Authority

The Authority is granted all powers necessary or convenient for the carrying out of its statutory purposes, including, but not limited to, the power to:

1. Sue and be sued, implead and be impleaded, complain and defend in all courts;

2. Adopt, use, and alter at will a common seal;

3. Acquire, purchase, hold, use, lease or otherwise dispose of any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority, and to lease as lessee, any property, real, personal or mixed, tangible or intangible, or any interest therein, at such annual rental and on such terms and conditions as may be determined by the Board and to lease as lessor to any person, any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed, at such annual rental and on such terms and conditions as may be determined by the Board and to sell, transfer or convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired or held by the Authority on such terms and conditions as may be determined by the Board, provided that the terms of any conveyance or lease of real property shall be subject to the prior written approval of the Governor;

4. Fix, alter, charge and collect rates, rentals, fees, and other charges for the use of property of, the sale of products of, or services rendered by the Authority at rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority;

5. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties, the furtherance of its purposes, and the execution of its powers under this article, including agreements with any person or federal agency;

6. Employ, at its discretion, consultants, researchers, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers, and such other employees and agents as may be necessary, and to fix their compensation to be payable from funds made available to the Authority. The Authority may hire employees within and without the Commonwealth and the United States without regard to whether such employees are citizens of the Commonwealth. Legal services for the Authority shall be provided by the Attorney General in accordance with Chapter 5 (§ 2.2-500 et seq.);

7. Receive and accept from any federal or private agency, foundation, corporation, association or person, grants or other aid to be expended in accomplishing the objectives of the Authority, and receive and accept from the Commonwealth or any state, and any municipality, county or other political subdivision thereof or from any other source, aid or contributions of either money, property, or other things of value, to be held, used, and applied only for the purposes for which such grants and contributions may be made. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law; and all state moneys accepted under this section shall be expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth;

8. Render advice and assistance and to provide services to state agencies, local and regional economic development entities, private firms, and other persons providing services or facilities for economic development in Virginia;

9. Develop, undertake, and provide programs, alone or in conjunction with any person, for economic research, industrial development research, and all other research that might lead to improvements in economic development in Virginia;

10. Adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed;

11. Do all acts and things necessary or convenient to carry out the powers granted to it by law, and perform any act or carry out any function not inconsistent with state law that may be useful in carrying out the provisions of this article; and

12. Administer any program established under the Virginia Jobs Investment Program described in § 2.2-2240.3.

1995, c. 638, §§ 2.1-548.33, 2.1-548.34, 2.1-548.35; 2001, c. 844; 2014, cc. 41, 464; 2016, c. 32.

§ 2.2-2238. Economic development services

A. It shall be the duty of the Authority to encourage, stimulate, and support the development and expansion of the economy of the Commonwealth. The Authority is charged with the following duties and responsibilities to:

1. See that there are prepared and carried out effective economic development marketing and promotional programs;

2. Make available, in conjunction and cooperation with localities, chambers of commerce, industrial authorities, and other public and private groups, to prospective new businesses basic information and pertinent factors of interest and concern to such businesses;

3. Formulate, promulgate, and advance programs throughout the Commonwealth for encouraging the location of new businesses in the Commonwealth and the retention and growth of existing businesses;

4. Encourage and solicit private sector involvement, support, and funding for economic development in the Commonwealth;

5. Encourage the coordination of the economic development efforts of public institutions, regions, communities, and private industry and collect and maintain data on the development and utilization of economic development capabilities;

6. Establish such offices within and without the Commonwealth that are necessary to the expansion and development of industries and trade;

7. Encourage the export of products and services from the Commonwealth to international markets;

8. (Effective until October 1, 2016) Advise, upon request, the State Board for Community Colleges in designating technical training programs in Virginia's comprehensive community colleges for the Community College Incentive Scholarship Program pursuant to § 23-220.4; and

8. (Effective October 1, 2016) Advise, upon request, the State Board for Community Colleges in designating technical training programs in Virginia's comprehensive community colleges for the Community College Incentive Scholarship Program pursuant to former § 23-220.4; and

9. Offer a program for the issuance of export documentation for companies located in Virginia exporting goods and services if no federal agency or other regulatory body or issuing entity will provide export documentation in a form deemed necessary for international commerce.

B. The Authority shall prepare a specific plan annually that shall serve as the basis for marketing high unemployment areas of Virginia. This plan shall be submitted to the Governor and General Assembly annually on or before November 1 of each year. The report shall contain the plan and activities conducted by the Authority to market these high unemployment areas. The annual report shall be part of the report required by § 2.2-2242.

C. The Authority may develop a site and building assessment program to identify and assess the Commonwealth's industrial sites of at least 250 acres. In developing such a program, the Authority shall establish assessment guidelines and procedures for identification of industrial sites, esource requirements, and development oversight. The Authority shall invite participation by regional and industry stakeholders to assess potential sites, identify product shortfalls, and make recommendations to the Governor and General Assembly for marketing such sites, in alignment with the goals outlined in the Governor's economic development plan.

D. The Authority may encourage the import of products and services from international markets to the Commonwealth.

1995, c. 638, § 2.1-548.29; 1996, cc. 590, 598; 1997, cc. 437, 448; 1999, c. 542; 2001, cc. 483, 557, 844; 2004, cc. 650, 872; 2009, cc. 374, 569; 2015, c. 342; 2016, c. 315.

§ 2.2-2238.1. Special economic development services in rural communities; strategic plan

A. In order to assist the rural communities of the Commonwealth, the Authority may develop a program for reviewing existing economic development programs of rural communities, upon request. The program shall include (i) a review and evaluation of existing industrial sites and infrastructure, including existing streets, water and sewer systems, electricity, natural gas and communications facilities that will provide high-speed or broadband Internet access to rural and underserved areas of the Commonwealth; (ii) an assessment of the existing workforce and the provision of information on state and federal programs such as tax incentives that may be available to local or prospective employers to assist in hiring and training in areas of high unemployment; (iii) assistance in identifying community resources and the type of industries that may benefit from locating in a community with such resources; and (iv) marketing assistance to help rural communities improve their visibility to expanding industries looking for new facilities.

B. The Authority, the Center for Rural Virginia, the Virginia Department of Housing and Community Development, the Virginia Resources Authority, the Department of Small Business and Supplier Diversity, the Virginia Tobacco Region Revitalization Commission, the Virginia Employment Commission, the Virginia Tourism Corporation, the Virginia Community College System, institutions of higher education within rural regions of the Commonwealth, and the Department of Agriculture and Consumer Services shall jointly develop and implement a rural economic development strategic plan that at a minimum addresses: (i) education, including pre-kindergarten, primary, secondary and post-graduate resources, and comprehensive workforce development programs, as they may pertain to the Workforce Innovation and Opportunity Act; (ii) infrastructure, including capital for water and sewer upgrading, waste management, law enforcement, housing, primary and secondary roads, and telecommunications; (iii) traditional industrial development and industry retention programs, including assistance in financing and in workforce training; (iv) recreational and cultural enhancement and related quality of life measures, including parks, civic centers, and theaters; (v) agribusiness incentives to promote the use of new technologies, and the exploration of new market opportunities; and (vi) a revolving loan fund or loan guarantee program

to help start or expand entrepreneurial activities, especially small business activities in rural communities.

2001, c. 531, § 2.1-548.29:1; 2005, cc. 737, 797; 2006, c. 251; 2013, c. 482; 2015, cc. 275, 292.

§ 2.2-2239. Planning and research

It shall also be the duty of the Authority to:

1. Assist in the development of the comprehensive economic development strategy for the Commonwealth, starting the first year of each new gubernatorial administration, consistent with the provisions of Article 3 (§ 2.2-204 et seq.) of Chapter 2 of this title;

2. Report annually to the Governor on the status of the implementation of the comprehensive economic development strategy and recommend legislative and executive actions related to the implementation of the comprehensive economic development strategy; and

3. Conduct such studies and research, in collaboration with state agencies, universities, local and regional industrial authorities and organizations, and other persons within and without the Commonwealth, as the Board deems necessary, to assist in the development of the comprehensive economic strategy and the development of recommendations and advice on the improvement of economic development and related programs and strategies across the Commonwealth.

1995, c. 638, § 2.1-548.30; 2001, c. 844.

§ 2.2-2240. Nonstock corporation to assist economic development

The Board may establish nonprofit, nonstock corporations under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as public instrumentalities exercising public and essential governmental functions, to assist the Board and the Authority in (i) promoting Virginia's economic development and tourism promotion efforts in the national and international corporate community; (ii) raising money in the corporate and nonprofit community to pay for advertising and promotion of the Commonwealth; (iii) raising nonstate dollars to complement state and local economic development activities; or (iv) conducting or undertaking other activities useful in carrying out the provisions of this article.

The board of directors of any such corporation shall be composed of the Chief Executive Officer of the Authority and eight members appointed by the Board of the Authority. However, any such corporation established to promote the tourism industry in the Commonwealth shall be composed of the Chief Executive Officer of the Authority, six members appointed by the Board of the Authority, and six members who represent the tourism industry appointed by the Governor. The terms of the members of any corporation established to promote the tourism industry in the Commonwealth appointed by the Governor shall be four years.

The Board shall require any such corporation to report to it at least annually on its activities.

1995, c. 638, § 2.1-548.43; 1996, cc. 590, 598; 2001, c. 844; 2010, c. 869.

§ 2.2-2240.1. Grants paid to the Authority to promote research, development, and commercialization of products

A. The General Assembly may appropriate grants to the Authority for use by a nonprofit, public benefit research institute that (i) conducts research and development for government agencies, commercial businesses, foundations, and other organizations and (ii) commercializes technology.

B. The Authority is hereby authorized to create a nonprofit, nonstock corporation to receive such grants and to oversee the administration of the payment of the grants. As a condition to the payment of any grants to the Authority under this section, the General Assembly may require that such nonprofit, nonstock corporation be created.

C. Notwithstanding the provisions of § 2.2-2240, the Board of Directors of the nonprofit, nonstock corporation shall consist of nine voting members as follows: (i) the president of the University of Virginia, or his designee, (ii) the president of Virginia Polytechnic Institute and State University, or his designee, (iii) the president of James Madison University, or his designee, (iv) the president (or the designee of such president) of Virginia Commonwealth University, Christopher Newport University, the University of Mary Washington, Radford University, Virginia State University, Norfolk State University, Old Dominion University, George Mason University, or Longwood University, as appointed by the Governor, with appointments to this position rotated equally among such universities, (v) one citizen member who shall have substantial experience in research and development in the fields of pharmaceuticals, engineering, energy, or similar sciences, appointed by the Governor, (vi) a representative of a nonprofit, public benefit research institute that has entered into a Memorandum of Agreement with the Commonwealth, (vii) the Secretary of Commerce and Trade, or his designee, (viii) the Secretary of Technology, or his designee, and (ix) a representative of a local government that has concluded a Memorandum of Agreement with such research institute. Citizen members appointed by the Governor shall serve for four-year terms, but no citizen member shall serve for more than two full successive terms. A vacancy for a citizen member shall be filled by the Governor for the unexpired term.

D. The Board is authorized to make grant payments only to those nonprofit, public benefit research institutes described in subsection A that have entered into a Memorandum of Agreement (MOA) with the Commonwealth. The MOA shall, at a minimum, (i) require the research institute to perform research, development, and commercialization activities that improve society and facilitate economic growth; (ii) require research to be conducted collaboratively with Virginia public and private institutions and that such collaborative research benefit the capabilities, facilities, and staff of all organizations involved; (iii) require the research institute to develop protocols for the commercialization efforts of the institute, including protocols addressing intellectual property rights; (iv) require the Board to evaluate fulfillment of key milestones for the research institute, which shall include but not be limited to milestones relating to job creation, research institute reinvestment goals, research proposals submissions, and royalties, and to annually evaluate the Commonwealth's investment in the research institute by reporting on the institute's progress in

meeting such milestones; and (v) establish relationships and expectations between the research institutes and Virginia colleges and universities, including opportunities for principal investigators to serve as adjunct faculty and the creation of internships for students and postdoctoral appointees.

E. The maximum amount of grants awarded by the Board shall not exceed a total of $22 million per recipient through June 30, 2013.

F. The Board of any nonprofit, nonstock corporation created under this section shall be established in the executive branch of state government. The records of the corporation, its Board members, and employees that are deemed confidential or proprietary shall be exempt from disclosure pursuant to subdivision 3 of § 2.2-3705.6 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

2007, c. 693.

§ 2.2-2240.2. Major Employment and Investment Project Site Planning Grant Fund established

A. There is hereby created in the state treasury a special nonreverting fund to be known as the MEI Site Planning Grant Fund, hereafter referred to as "the Fund," to be administered by the Authority. The Fund shall consist of such funds as may be appropriated by the General Assembly and any gifts, grants, or donations from public or private sources. The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Executive Director of the Authority.

B. Moneys in the Fund shall be used for the sole purpose of awarding grants on a competitive basis to political subdivisions to assist in the performance of site and site development work for prospective MEI projects, subject to the approval by the Governor. The Authority shall establish guidelines for awarding site planning grants that give consideration in order to (i) ensure geographical representation of awards, (ii) limit the amount of annual recipients, (iii) identify strategic targets and select sites that are compatible with the strategic targets, and (iv) promote regional revenue sharing.

C. For the purposes of this section:

"Local government" means the same as that term is defined in § 62.1-199.

"Major Employment and Investment project" or "MEI project" means the same as that term is defined in § 2.2-2260.

2010, cc. 487, 536.

§ 2.2-2240.3. Definitions; Virginia Jobs Investment Program and Fund; composition; general qualifications

A. As used in this section and §§ 2.2-2240.4, 2.2-2240.5, and 2.2-2240.6, unless the context requires a different meaning:

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is or may be capitalized by the company and that establishes or increases the productivity of the manufacturing facility, results in the utilization of a more advanced technology than is in use immediately prior to such investment, or both.

"Full-time employee" means a natural person employed for indefinite duration in a position requiring a minimum of either (i) 35 hours of the employee's time per week for the entire normal year, which "normal year" shall consist of at least 48 weeks, or (ii) 1,680 hours per year. Seasonal or temporary employees shall not qualify as new full-time employees under the Program.

"Fund" means the Virginia Jobs Investment Program Fund created in this section.

"Program" means the Virginia Jobs Investment Program created in this section.

B. There is hereby created the Virginia Jobs Investment Program to support private sector job creation by encouraging the expansion of existing Virginia businesses and the start-up of new business operations in Virginia. The Program shall support existing businesses and economic development prospects by offering funding to offset recruiting and training and retraining costs incurred by companies that are either creating new jobs or implementing technological upgrades and by providing assistance with workforce-related challenges and organizational development workshops.

C. The Program shall consist of the following component programs:

1. The Virginia New Jobs Program;

2. The Workforce Retraining Program; and

3. The Small Business New Jobs and Retraining Programs.

D. To be eligible for assistance under any of the component programs of the Program, a company shall:

1. Create or sustain employment for the Commonwealth in a basic sector industry or function, which would include businesses or functions that directly or indirectly derive more than 50 percent of their revenues from out-of-state sources, as determined by the Authority;

2. Pay a minimum entry-level wage rate per hour of at least 1.35 times the federal minimum wage. In areas that have an unemployment rate of one and one-half times the statewide average unemployment rate, the wage rate minimum may be waived by the Authority. Only full-time positions that qualify for benefits shall be eligible for assistance;

3. Meet such additional criteria as may be set forth by the Authority.

E. There is hereby established in the state treasury a special nonreverting fund to be known as the Virginia Jobs Investment Program Fund (the Fund). The Fund shall consist of any moneys appropriated thereto by the General Assembly from time to time and designated for the Fund. Any moneys deposited to or remaining in the Fund during or at the end of each fiscal year or biennium, including interest thereon, shall not revert to the general fund but shall remain in the Fund and be available for allocation under this article in ensuing fiscal years. Moneys in the Fund shall be used solely for grants to eligible businesses as permitted by the Program. The total amount of funds provided to eligible businesses under the Program for any year, shall not exceed the amount appropriated by the General Assembly to the Fund for such year, plus any carryover from previous years. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the President and Chief Executive Officer or his designee. The Fund shall be administered by the President and Chief Executive Officer.

2014, cc. 41, 464.

§ 2.2-2240.4. Virginia New Jobs Program

A. The Authority shall develop as a component of the Virginia Jobs Investment Program the Virginia New Jobs Program to support the expansion of existing Virginia companies and new facility locations involving competition with other states or countries.

B. In addition to the requirements of subsection D of § 2.2-2240.3 regarding company eligibility, to be eligible for assistance, an expansion of an existing company or a new company location shall (i) create a minimum of 25 net new jobs for full-time employees, (ii) make a capital investment of at least $1 million, and (iii) include Virginia in a current competition for the location of the project with at least one other state or country.

The Secretary of Commerce and Trade may waive these requirements but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

2014, cc. 41, 464.

§ 2.2-2240.5. Workforce Retraining Program

A. The Authority shall develop as a component of the Virginia Jobs Investment Program the Workforce Retraining Program to provide consulting services and funding to assist companies and businesses with retraining their existing workforces to increase productivity.

B. In addition to the requirements of subsection D of § 2.2-2240.3 regarding company eligibility, to be eligible for assistance a company shall demonstrate that (i) it is undergoing integration of new technology into its production process, a change of product line in keeping with marketplace demands, or substantial change to its service delivery process that would require assimilation of

new skills and technological capabilities by the firm's existing labor force and (ii) for each such integration of new technology, change of product, or substantial change to its service delivery process, (a) no less than 10 full-time employees are involved and (b) a minimum capital investment of $500,000 will be made within a 12-month period.

The Secretary of Commerce and Trade may waive these requirements but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

2014, cc. 41, 464.

§ 2.2-2240.6. Small Business New Jobs and Retraining Programs

A. The Authority shall develop as a component of the Virginia Jobs Investment Program the Small Business New Jobs and Retraining Programs to support the establishment or expansion of Virginia's small businesses or to improve their efficiency through retraining.

B. In addition to the requirements of subsection D of § 2.2-2240.3 regarding company eligibility, to be eligible for assistance for new job creation a company shall create a minimum of five net new jobs for full-time employees and make a capital investment of at least $100,000. In addition to the requirements of subsection D of § 2.2-2240.3 regarding company eligibility, to be eligible for assistance for retraining a company shall demonstrate that (i) it is undergoing integration of new technology into its production process, a change of product line in keeping with marketplace demands, or substantial change to its service delivery process that would require assimilation of new skills and technological capabilities by the firm's existing labor force and (ii) for each such integration of new technology, change of product, or substantial change to its service delivery process, (a) no less than five full-time employees are involved and (b) a minimum capital investment of $50,000 will be made within a 12-month period.

The Secretary of Commerce and Trade may waive these requirements but shall promptly provide written notice of any such waiver to the Chairmen of the Senate Finance and House Appropriations Committees, which notice shall include a justification for any waiver of these requirements.

2014, cc. 41, 464.

§ 2.2-2241. Moneys of Authority

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other orders of such persons as the Authority may authorize to execute such warrants or orders.

1995, c. 638, § 2.1-548.39; 2001, c. 844.

§ 2.2-2242. Forms of accounts and records; audit; annual report

The accounts and records of the Authority showing the receipt and disbursement of funds from whatever source derived shall be in a form prescribed by the Auditor of Public Accounts. The Auditor of Public Accounts or his legally authorized representatives, shall annually examine the accounts and books of the Authority.

The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain the audited annual financial statements of the Authority for the year ending the previous June 30.

The Authority shall submit a detailed annual operational plan and budget to the Secretary of Commerce and Trade and the Director of the Department of Planning and Budget by November 1. Notwithstanding other provisions of this article, the form and content of the operating plan and budget shall be determined by the Director of the Department of Planning and Budget and shall include information on salaries, expenditures, indebtedness and other information as determined by the Director of the Department of Planning and Budget.

1995, c. 638, § 2.1-548.40; 2001, c. 844; 2004, c. 650.

§ 2.2-2243. Exemptions from taxes or assessments

The exercise of the powers granted by this article shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their living conditions, and as the undertaking of activities in the furtherance of the purposes of the Authority constitutes the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any property acquired or used by the Authority under the provisions of this article or upon the income therefrom, including sales and use taxes on the tangible personal property used in the operations of the Authority. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of any property of the Authority businesses for which local or state taxes would otherwise be required.

1995, c. 638, § 2.1-548.41; 2001, c. 844.

§ 2.2-2244. Exemption of Authority from personnel and procurement procedures

The provisions of the Virginia Personnel Act (§ 2.2-2900 et seq.) of and the Virginia Public Procurement Act (§ 2.2-4300 et seq.) of this title shall not apply to the Authority in the exercise of any power conferred under this article.

1995, c. 638, § 2.1-548.38; 2001, c. 844.

§ 2.2-2245. Appropriations by any government

Any government may make appropriations for the acquisition, construction, improvement, maintenance or operation of any property acquired, constructed, improved, maintained or operated by the Authority.

1995, c. 638, § 2.1-548.36; 2001, c. 844.

§ 2.2-2246. Conveyance, lease or transfer of property by a city or county to the Authority
Any city or county within the Commonwealth in order to provide for the construction, reconstruction, improvement, repair or management of any property, or in order to accomplish any of the purposes of this article may, with or without consideration or for a nominal consideration, lease, sell, convey or otherwise transfer to the Authority any real, personal or mixed property located within such city or county.

1995, c. 638, § 2.1-548.37; 2001, c. 844.

Article 5 - VIRGINIA INFORMATION PROVIDERS NETWORK AUTHORITY

§§ 2.2-2247 through 2.2-2259. Repealed
Repealed by Acts 2003, cc. 981 and 1021.

Article 6 - VIRGINIA PUBLIC BUILDING AUTHORITY

§ 2.2-2260. Short title; definition
A. This article may be cited as Virginia Public Building Authority Act of 1981.

B. As used in this article, unless the context requires a different meaning:

"Construction" or "to construct" means acquisition and construction, all in such manner as may be deemed desirable.

"Cost" means as applied to a project financed under the provisions of this article, the sum total of all costs reasonable and necessary for carrying out all works and undertakings necessary or incident to accomplish a project, including, but not limited to the cost of all necessary developmental, planning and feasibility studies, surveys, plans and specifications, architectural, engineering, financial, legal or other special services, the cost of acquisition of land and any buildings and improvements thereon, including the discharge of any obligations of the vendor of such land, buildings or improvements, site preparation and development including demolition or removal of existing structures, construction, and reconstruction, furnishing of a project, the reasonable cost of financing incurred in the course of the development of a project, carrying charges during construction to the occupancy date, interest on bonds issued to finance a project to a date subsequent to the estimated date of completion of a project, necessary expenses incurred in connection with the initial occupancy of a project, the cost of reimbursing the Central Capital Planning Fund, established under § 2.2-1520, for payments made for pre-planning or detailed planning of all projects that have been approved for construction by the General Assembly, the funding of such funds and accounts as the Authority determines to be reasonable and necessary and the cost of such other items as the Authority determines to be reasonable and necessary.

"Fixtures" and "furnishings" means any fixtures, leasehold improvements, equipment, office furniture and furnishings whatsoever necessary or desirable for the use and occupancy of such project, and the terms "to furnish" and "furnishing" means the acquisition and installation of such fixtures, equipment and furnishings.

"Improvement" or "to improve" means extension, enlargement, improvement, and renovation, all in such manner as may be deemed desirable.

"Major Employment and Investment project" or "MEI project" means a high-impact regional economic development project in which a private entity is expected to make a capital investment in real and tangible personal property exceeding $250 million and create more than 400 new full-time jobs, and is expected to have a substantial direct and indirect economic impact on surrounding communities.

"Personal property" means all items of equipment, fixtures, and furnishings, including items affixed to real property.

"Project" means any structure, facility, personal property or undertaking that the Authority is authorized to finance, refinance, construct, improve, furnish, equip, maintain, acquire, or operate under the provisions of this article.

1981, c. 569, §§ 2.1-234.10, 2.1-234.11; 1992, c. 878; 1994, c. 823; 1996, c. 835; 1998, cc. 498, 504; 2000, cc. 67, 279; 2001, c. 844; 2008, Sp. Sess. I, cc. 1, 2; 2009, cc. 246, 311.

§ 2.2-2261. Virginia Public Building Authority created; purpose; membership; terms; expenses; staff

There is created a political subdivision of the Commonwealth to be known as the "Virginia Public Building Authority." The Authority is created for the purpose of constructing, improving, furnishing, maintaining, acquiring, financing, refinancing, and operating public buildings for the use of the Commonwealth (heretofore or hereafter constructed), state arsenals, armories, and military reserves, state institutions of every kind and character (heretofore and hereafter constructed), additions and improvements to land grant colleges, state colleges, universities and medical colleges, and the purchase of lands for rehabilitation purposes in connection with state institutions and for use of state colleges, and museum facilities for a trust instrumentality of the United States, and the purchase of lands for the development of public buildings that may be authorized by the General Assembly in the future, the acquisition of items of personal property for the use of the Commonwealth, the constructing, improving, maintaining, acquiring, financing, and refinancing of major information technology projects as defined in § 2.2-2006, the financing or refinancing of capital projects that benefit the Commonwealth and any of its agencies, authorities, boards, departments, instrumentalities, institutions, or regional or local authorities, the provision of financing on behalf of any of the Commonwealth's agencies, authorities, boards, departments, instrumentalities, institutions, or regional or local authorities or governments of land, buildings, infrastructure, and improvements for the benefit of an MEI project incentive package endorsed by the MEI Project Approval Commission created pursuant to § 30-309, and the financing or refinancing of reimbursements to localities or governmental entities of all or any portion of the Commonwealth's share of the costs for capital projects made pursuant to other applicable provisions of Virginia law, and the refinancing of (i) obligations issued by other state and local authorities or

political subdivisions of the Commonwealth where such obligations are secured by a lease or other payment agreement with the Commonwealth or (ii) the Commonwealth's obligations under such leases or payment agreements, the purpose and intent of this article being to benefit the people of the Commonwealth by, among other things, increasing their commerce and prosperity.

The Authority shall be comprised of the State Treasurer or his designee, the State Comptroller, and five additional members appointed by the Governor, subject to confirmation by the General Assembly, who shall serve at the pleasure of the Governor. Unconfirmed appointments shall expire 30 days after the convening of the General Assembly. Members of the Authority shall be entitled to no compensation for their services as members, but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825. The term of each member appointed by the Governor shall be five years.

Vacancies in the membership of the Authority shall be filled by appointment for the unexpired portion of the term. The Governor shall designate one member of the Authority as chairman who shall serve a two-year term. No member shall be eligible to serve more than two consecutive terms as chairman. The Department of the Treasury shall serve as staff to the Authority.

1981, c. 569, § 2.1-234.12; 1995, c. 841; 1998, cc. 498, 504; 2001, c. 844; 2002, cc. 501, 542; 2003, cc. 981, 1021; 2009, cc. 246, 311; 2011, cc. 691, 714.

§ 2.2-2262. Board of directors

The powers of the Authority shall be exercised by a governing body consisting of the members of the Authority acting as a board. The Board shall elect from its membership a vice-chairman, treasurer and secretary. The offices of secretary and treasurer may be combined. The Board may elect such other officers who need not be a member of the Board.

Four members shall constitute a quorum of the Board for the purpose of organizing the Authority, conducting its business, and for all other purposes. All actions shall be taken by vote of a majority of the members of the Board, unless Authority bylaws require a larger number.

The Board shall have full authority to manage the properties and business of the Authority, and to prescribe, amend, and repeal bylaws, rules, and regulations governing the manner in which the business of the Authority may be conducted, and the powers granted to it may be exercised. The Board may assign to the Treasury Board or the State Treasurer such powers and duties as it deems proper.

1981, c. 569, § 2.1-234.25; 1993, Sp. Sess., c. 1; 1996, c. 835; 1998, cc. 498, 504; 2001, c. 844.

§ 2.2-2263. Powers and duties of Authority; limitations

A. The Authority is granted all powers necessary or convenient for carrying out its purposes, including, but not limited to, the following powers to:

1. Have perpetual existence as a corporation.

2. Sue and be sued, implead and be impleaded, complain and defend in all courts.

3. Adopt, use, and alter at will a corporate seal.

4. Acquire, purchase, hold and use any property, real, personal or mixed, tangible or intangible, or any interest therein necessary or desirable for carrying out the purposes of the Authority; lease as lessee, with the approval of the Governor, any property, real, personal or mixed, or any interest therein for a term not exceeding 99 years at a nominal rental or at such annual rental as may be determined; with the approval of the Governor, lease as lessor to the Commonwealth and any city, county, town or other political subdivision, or any agency, department, or public body of the Commonwealth, or land grant college, any project at any time constructed by the Authority and any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority, whether wholly or partially completed; with the approval of the Governor, sell, transfer and convey to the Commonwealth, any project at any time constructed by the Authority; and, with the approval of the Governor, sell, transfer and convey any property, real, personal or mixed, tangible or intangible, or any interest therein, at any time acquired by the Authority.

5. Acquire by purchase, lease, or otherwise, and construct, improve, furnish, maintain, repair, and operate projects.

6. Adopt bylaws for the management and regulation of its affairs.

7. Fix, alter, charge, and collect rates, rentals, and other charges for the use of the facilities of, or for the services rendered by, the Authority, or projects thereof, at reasonable rates to be determined by it for the purpose of providing for the payment of the expenses of the Authority, the construction, improvement, repair, furnishing, maintenance, and operation of its facilities and properties, the payment of the principal of and interest on its bonds, and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such bonds.

8. Borrow money; make and issue bonds of the Authority and such bonds as the Authority may determine to issue for the purpose of refunding obligations previously issued by the Authority; secure the payment of all bonds, or any part thereof, by pledge or deed of trust of all or any of its revenues, rentals, and receipts; make such agreements with the purchasers or holders of such bonds or with others in connection with any such bonds, whether issued or to be issued, as the Authority deems advisable; and in general, provide for the security for the bonds and the rights of holders thereof.

The Authority shall submit an annual report to the Governor and General Assembly on or before November 1 of each year containing, at a minimum, the annual financial statements of the Authority for the year ending the preceding June 30.

9. Make contracts of every name and nature, and to execute all instruments necessary or convenient to carry out its business.

10. Borrow money and accept grants from, and enter into contracts, leases or other transactions with, any federal agency.

11. Have the power of eminent domain.

12. Pledge or otherwise encumber all or any of the revenues or receipts of the Authority as security for all or any of the bonds of the Authority.

13. Do all acts and things necessary or convenient to carry out the powers granted to it by law.

14. Acquire, by assignment from the Commonwealth or the Virginia Retirement System, all contracts, including those that are not completed, which involve constructing, improving, furnishing, maintaining, and operating the structures, facilities, or undertakings similar to those designated herein as projects.

15. Enter into contractual agreements with localities or governmental entities undertaking a capital project that benefits the Commonwealth for which the financing or refinancing of reimbursements of all or any portion of the Commonwealth's share of the costs of such project will be made pursuant to other applicable provisions of Virginia law.

16. Provide for the financing or assist in the financing by any of the Commonwealth's agencies, authorities, boards, departments, instrumentalities, institutions, or regional or local authorities or governments of land, buildings, infrastructure, and improvements for the benefit of an MEI project incentive package endorsed by the MEI Project Approval Commission created pursuant to § 30-309.

B. The Authority shall not undertake or finance or refinance any projects or MEI projects that are not specifically included in a bill or resolution passed by a majority of those elected to each house of the General Assembly, authorizing such projects or MEI projects or the reimbursement of all or any portion of the Commonwealth's share of the costs of such projects or MEI projects and, as to any project relating to a public institution of higher education in Virginia, not specifically designated by the board of visitors of that institution as a project to be undertaken by the Authority.

C. Except as otherwise provided by law, when projects are to be constructed, improved, furnished, maintained, repaired or operated for the use of any department of the Commonwealth, no plans or specifications therefor shall be presented for quotations or bids until the plans and specifications have been submitted to and approved by the Department of General Services and any other department of the Commonwealth having any jurisdiction over the projects, so that the project will conform to standards established by such departments.

1981, c. 569, § 2.1-234.13; 1984, c. 734; 1985, c. 146; 1987, cc. 11, 616; 1988, cc. 23, 731, 761, 830; 1990, cc. 815, 876; 1991, c. 656; 1992, c. 878; 1993, Sp. Sess., c. 1; 1994, c. 823; 1995, c. 841; 1996, c. 835; 1998, cc. 498, 504; 2000, cc. 67, 279; 2001, c. 844; 2002, cc. 501, 542; 2004, c. 650; 2009, cc. 246, 311.

§ 2.2-2264. Revenue bonds generally

The Authority may, with the consent of the Governor, provide for the issuance of revenue bonds of the Authority for the purpose of paying all or any part of the cost of any one or more projects or portions thereof. The principal of and the interest on such bonds shall be payable solely from the funds provided in this article for such payment. Any bonds of the Authority issued pursuant to this article shall not constitute a debt of the Commonwealth, or any political subdivision thereof other than the Authority, and shall so state on their face. Neither the members of the Authority nor any person executing the bonds shall be liable personally by reason of the issuance thereof. The bonds of each issue shall be dated, shall bear interest, shall mature at such time not exceeding forty years from their date as determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price and under such terms and conditions as determined by the Authority, prior to the issuance of the bonds. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denominations of the bonds and the places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In case any officer whose signature or a facsimile of whose signature appears on any bonds or coupons shall cease to be such officer before the delivery of the bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes as if he had remained in office until such delivery. The bonds may be issued in coupon or in registered form or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell such bonds in a manner, either at public or private sale, and for such price as it determines will best effect the purposes of this article.

The proceeds of the bonds of each issue shall be used solely for the payment of the cost of the projects for which such bonds shall have been issued, and shall be disbursed in the manner and under the restrictions, if any, the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement securing the bonds. If the proceeds of the bonds of any issue, by error of estimates or otherwise, is less than the cost, additional bonds may be issued to provide the amount of such deficit, and, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be deemed to be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed such cost, the surplus shall be deposited to the credit of the sinking fund for such bonds, or may be applied to the payment of the cost of any additional projects.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds that shall become mutilated or shall be destroyed or

lost. Bonds may be issued under the provisions of this article without obtaining the consent of any department, division, commission, board, bureau or agency of the Commonwealth, and without any other proceedings or the happening of any other conditions or things than those proceedings, conditions or things that are specifically required by this article.

1981, c. 569, § 2.1-234.14; 1998, cc. 498, 504; 2001, c. 844.

§ 2.2-2265. Trust agreement securing bonds

In the discretion of the Authority any bonds issued under the provisions of this article may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign the revenues to be received, but shall not convey or mortgage any project or any part thereof. The trust agreement or resolution providing for the issuance of such bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the acquisition of property and the acquisition, construction, establishment, improvement, extension, enlargement, maintenance, repair, operation and insurance of the project in connection with which the bonds have been authorized, the rates and fees to be charged, the custody, safeguarding and application of all moneys, and conditions or limitations with respect to the issuance of additional bonds. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenues to furnish the indemnifying bonds or to pledge the securities required by the Authority. Any such trust agreement may set forth the rights of action by bondholders. In addition to the foregoing, any such trust agreement or resolution may contain such other provisions as the Authority deems reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of a trust agreement or resolution may be treated as a part of the cost of the operation of the project.

1981, c. 569, § 2.1-234.15; 2001, c. 844.

§ 2.2-2266. Rents, fees and charges for financing or refinancing, services or use of facilities; use and disposition of revenues

The Authority may fix, revise, charge, and collect rates, fees, and other charges for the financing or refinancing of, the use of or for the services and facilities furnished by each project and the different parts thereof, and to contract with any agency, commission, political subdivision or other entity desiring the use of any part thereof, and to fix the terms, conditions, rents, and rates of charges for such use or financing or refinancing. Such rates, fees, and other charges shall be fixed and adjusted so that revenues of the Authority, together with any other available funds, will be sufficient at all times to pay (i) the cost of maintaining, repairing and operating such project and (ii) the principal of and the interest on the related bonds as they become due and payable, and to create reserves for such purposes. Such rates, fees, and other charges shall not be subject to

supervision or regulation by any other commission, board, bureau, or agency of the Commonwealth. The revenues derived from the project in connection with which the bonds have been issued, except such part thereof as may be necessary to pay the cost of maintenance, repair and operation and to provide such reserves therefor as may be provided for in the resolution authorizing the issuance of such bonds or in the trust agreement securing the bonds, shall be set aside at such regular intervals as may be provided in the resolution or trust agreement in a sinking fund which is pledged to, and charged with, the payment of the principal of and the interest on such bonds as they become due, and the redemption price or the purchase price of bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time when the pledge is made, the revenues or other moneys so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of moneys to the credit of such sinking fund shall be subject to the provisions of the resolution authorizing the issuance of the bonds or of the trust agreement. Except as may otherwise be provided in the resolution or trust agreement, such sinking fund shall be a fund for all such bonds without distinction or priority of one over another.

1981, c. 569, § 2.1-234.16; 1998, cc. 498, 504; 2001, c. 844.

§ 2.2-2267. Moneys received deemed trust funds

All moneys received pursuant to the authority of this article, whether as proceeds from the sale of bonds or as revenues, shall be deemed to be trust funds to be held and applied solely as provided in this article. The resolution authorizing the bonds of any issue or the trust agreement securing the bonds shall provide that any officer with whom, or any bank or trust company with which, such moneys are deposited shall act as a trustee of the moneys and shall hold and apply the same for the purposes hereof, subject to the regulations as this article and the resolution or trust agreement may provide.

1981, c. 569, § 2.1-234.17; 2001, c. 844.

§ 2.2-2268. Proceedings by bondholder or trustee to enforce rights

Any holder of bonds issued under the provisions of this article or any of the coupons appertaining thereto, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the trust agreement or the resolution authorizing the issuance of the bonds, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under the trust agreement or resolution, and may enforce and compel the performance of all duties required by this article or by the trust agreement or resolution to be performed by the Authority or by any officer thereof, including the fixing, charging, and collecting of rates, fees, and other charges.

1981, c. 569, § 2.1-234.18; 2001, c. 844.

§ 2.2-2269. Bonds made securities for investment and deposit

Bonds issued by the Authority under the provisions of this article shall be securities in which all public officers and public bodies of the Commonwealth and its political subdivisions, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees, and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. Such bonds shall be securities that may properly and legally be deposited with and received by any state or municipal officer or any agency or political subdivision of the Commonwealth for any purpose for which the deposit of bonds or obligations of the Commonwealth is now or may be authorized by law.

1981, c. 569, § 2.1-234.19; 2001, c. 844.

§ 2.2-2270. Revenue refunding bonds; bonds for refunding and for cost of additional projects

The Authority may provide for the issuance of revenue refunding bonds of the Authority for the purpose of refunding any obligations then outstanding which have been issued under the provisions of this article or by other state and local authorities or political subdivisions of the Commonwealth where such obligations are secured by a lease or other payment agreement with the Commonwealth, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of the obligations, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions, or enlargements of the project in connection with which the obligations to be refunded have been issued. The Authority may provide by resolution for the issuance of its revenue obligations for the combined purpose of (i) refunding any obligations then outstanding that have been issued under the provisions of this article or by other state and local authorities or political subdivisions of the Commonwealth where such obligations are secured by a lease or other payment agreement with the Commonwealth, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such obligations, and (ii) paying all or any part of the cost of any additional project or any portion thereof. The issuance of the bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties and obligations of the Authority shall be governed by the provisions of this article insofar as they may be applicable.

1981, c. 569, § 2.1-234.20; 1998, cc. 498, 504; 2001, c. 844; 2002, cc. 501, 542.

§ 2.2-2271. Grants or loans of public or private funds

The Authority may accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, including proceeds of the Authority's bonds, made available by grant or loan or both, to accomplish, in whole or in part, any of the purposes of this article. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state

law; and all state moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth.

1981, c. 569, § 2.1-234.23; 1998, cc. 498, 504; 2001, c. 844.

§ 2.2-2272. Moneys of Authority; audit

All moneys of the Authority, from whatever source derived, shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts, and each of such special accounts shall be continuously secured by a pledge of direct obligations of the United States or of the Commonwealth, having an aggregate market value, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account. Such securities shall either be deposited with the treasurer or be held by a trustee or agent satisfactory to the Authority. All banks and trust companies are authorized to give such security for such deposits. The moneys in such accounts shall be paid out on the warrant or other order of the treasurer of the Authority, or of such other persons as the Authority may authorize to execute such warrants or orders.

The Auditor of Public Accounts or his legally authorized representatives may examine the accounts and books of the Authority, including its receipts, disbursements, contracts, leases, sinking funds, investments, and any other matters relating to its finances, operation and affairs.

1981, c. 569, § 2.1-234.26; 2001, c. 844.

§ 2.2-2273. Contracts, leases and other arrangements

A. In connection with the operation of a facility owned or controlled by the Authority, the Authority may enter into contracts, leases, and other arrangements with any person (i) granting the privilege of using or improving the facility or any portion or facility thereof or space therein consistent with the purposes of this article; (ii) conferring the privilege of supplying goods, commodities, things, services, or facilities at the facility; (iii) making available services to be furnished by the Authority or its agents at the facility; and (iv) providing for the payment therefor.

In each case the Authority may establish the terms and conditions and fix the charges, rentals, or fee for the privilege or service, which shall be reasonable and uniform for the same class of privilege or service at each facility and shall be established with due regard to the property and improvements used and the expenses of operation to the Authority.

B. Except as may be limited by the terms and conditions of any grant, loan or agreement authorized by § 2.2-2271, the Authority may by contract, lease, or other arrangements, upon a consideration fixed by it, grant to any qualified person, for a term not to exceed thirty years, the privilege of operating, as agent of the Authority or otherwise, any facility owned or controlled by the Authority; provided that no person shall be granted any authority to operate a facility other than as a public facility or to enter into any contracts, leases, or other arrangements in connection with the operation of the facility that the Authority might not have undertaken under subsection A.

C. In connection with a project leased to or financed or refinanced for a trust instrumentality of the United States where payments or contributions by the Commonwealth and any political subdivision, together with amounts pursuant to an agreement with such trust instrumentality to pay rent or other amounts, are sufficient to pay the principal of and interest on the Authority's bonds issued to finance or refinance such project, the Authority may agree that such trust instrumentality shall assume all responsibility for the acquisition, construction, operation, maintenance, and repair of the project and may further agree that when the principal of all such bonds of the Authority and the interest thereon have been paid in full or provision made therefor satisfactory to the Authority, the trust instrumentality may acquire the Authority's interest in such project without payment of additional consideration.

1981, c. 569, § 2.1-234.21; 1990, c. 815; 1998, cc. 498, 504; 2001, c. 844.

§ 2.2-2274. Resolutions, rules and regulations, etc

The Authority may adopt, amend, and repeal such reasonable resolutions, rules, regulations, and orders as it deems necessary for the management, government, and use of any facility owned by it or under its control. No rule, regulation, order, or standard prescribed by the Authority shall be inconsistent with, or contrary to, any law of the Commonwealth or act of the Congress of the United States or any regulation adopted or standard established pursuant thereto. The Authority shall keep on file at the principal office of the Authority for public inspection a copy of all its rules and regulations.

1981, c. 569, § 2.1-234.22; 2001, c. 844.

§ 2.2-2275. Competition in award of contracts; contractors to give surety; terms of contracts

If any project or any portion thereof or any improvement thereof shall be constructed, or furnished pursuant to a contract and the estimated cost thereof exceeds $10,000, such contract with the Authority shall be awarded to the lowest responsible bidder after advertisement for bids. The Authority may make rules and regulations for the submission of bids and the construction, furnishing, or improvement of any project or portion thereof to be owned by the Authority, the Commonwealth or any agency, institution, or department thereof. No contract shall be entered into by the Authority for construction, furnishing, or improvement of any project, or portion thereof, or for the purchase of materials, unless the contractor gives an undertaking with a sufficient surety approved by the Authority, and in an amount fixed by the Authority in accordance with § 2.2-4337, for the faithful performance of the contract. Such contract shall be accompanied by an additional bond for the protection of those who furnish labor and material or rental equipment for such amount and subject to the same terms and conditions as established by the Authority in accordance with § 2.2-4337. All construction contracts shall provide, among other things, that the person or corporation entering into such contract with the Authority will pay for all materials furnished, rental equipment used and services rendered for the performance of the contract, and that any person or corporation furnishing such materials, rental equipment or rendering such services may maintain an action to recover for the same against the obligor in the undertaking as though

such person or corporation was named therein, provided the action is brought within one year after the time the cause of action accrued. The additional bond shall be conditioned upon the prompt payment of actual equipment rentals and shall not be conditioned upon or guarantee payment of equipment rentals, all or any part of which, directly or indirectly, apply on the purchase price of such equipment under the terms of a bailment lease or conditional sales contract or by any other arrangement by which title to the equipment will be transferred to the contractor and the rentals form any part of the consideration.

Subject to the foregoing, the Authority may, but without intending by this provision to limit any powers of the Authority, enter into and carry out such contracts, or establish or comply with such rules and regulations concerning labor and materials to rental equipment and other related matters in connection with any project, or portion thereof, as the Authority deems desirable.

1981, c. 569, § 2.1-234.27; 1998, cc. 498, 504; 2001, c. 844.

§ 2.2-2276. Eminent domain; right of entry

The Authority is vested with the power of eminent domain and may exercise it for the purposes set forth in this article. If the owner, lessee, or occupier of any property to be condemned or otherwise acquired refuses to remove his property therefrom or give up possession, the Authority may proceed to obtain possession in any manner provided by law.

1981, c. 569, § 2.1-234.28; 2001, c. 844.

§ 2.2-2277. Jurisdiction of suits against Authority; service of process

The Circuit Court of the City of Richmond shall have exclusive jurisdiction of any suit brought in Virginia against the Authority, and process in any such suit shall be served either on the State Treasurer or the chairman of the Authority.

1993, Sp. Sess., c. 1, § 2.1-234.28:1; 2001, c. 844.

§ 2.2-2278. Exemption from taxes or assessments

The exercise of the powers granted by this article shall be in all respects for the benefit of the people of the Commonwealth, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions, and as the operation and maintenance of projects by the Authority constitutes the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon any project or any property acquired or used by the Authority under the provisions of this article or upon the income therefrom, and any bonds issued under the provisions of this article, their transfer and the income therefrom (including any profit made on the sale thereof), shall at all times be free from taxation within the Commonwealth. The exemption granted in this section shall not be construed to extend to persons conducting on the premises of a facility businesses for which local or state taxes would otherwise be required.

1981, c. 569, § 2.1-234.24; 2001, c. 844.

Article 7 - VIRGINIA SMALL BUSINESS FINANCING AUTHORITY

§ 2.2-2279. Short title; definitions

A. This article shall be known and may be cited as the "Virginia Small Business Financing Act."

B. As used in this article, unless the context requires a different meaning:

"Business enterprise" means any (i) industry for the manufacturing, processing, assembling, storing, warehousing, servicing, distributing, or selling of any products of agriculture, mining, or industry or professional services; (ii) commercial enterprise making sales or providing services to industries described in clause (i); (iii) enterprise for research and development, including but not limited to scientific laboratories; (iv) not-for-profit entity operating in the Commonwealth; (v) entity acquiring, constructing, improving, maintaining, or operating a qualified transportation facility under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.); (vi) entity acquiring, constructing, improving, maintaining, or operating a qualified energy project; (vii) entity acquiring, constructing, improving, maintaining, or operating a qualified pollution control project; or (viii) other business as will be in furtherance of the public purposes of this article.

"Cost," as applied to the eligible business, means the cost of construction; the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests; the cost of demolishing, removing, rehabilitating or relocating any buildings or structures on lands acquired, including the cost of acquiring any such lands to which such buildings or structures may be moved, rehabilitated or relocated; the cost of all labor, materials, machinery and equipment, financing charges, letter of credit or other credit enhancement fees, insurance premiums, interest on all bonds prior to and during construction or acquisition and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction or acquisition, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, commissions, guaranty fees, other expenses necessary or incident to determining the feasibility or practicality of constructing, financing or operating a project of an eligible business; administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions, improvements and replacements, and such other expenses as may be necessary or incidental to the construction or acquisition of a project of an eligible business or the financing of such construction, acquisition or expansion and the placing of a project of an eligible business in operation. Any obligation or expense incurred by the Commonwealth or any agency thereof, with the approval of the Authority for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction or acquisition of a project of an eligible business may be regarded as a part of the cost of a project of an eligible business and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued therefor.

"Eligible business" means any person engaged in one or more business enterprises in the Commonwealth that satisfies one or more of the following requirements: (i) is a for-profit enterprise

that (a) has received $10 million or less in annual gross income under generally accepted accounting principles for each of its last three fiscal years or lesser time period if it has been in existence less than three years, (b) has fewer than 250 employees, (c) has a net worth of $2 million or less, (d) exists for the sole purpose of developing or operating a qualified transportation facility under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.), (e) exists for the primary purpose of developing or operating a qualified energy project, (f) is required by state or federal law to develop or operate a qualified pollution control project, or (g) meets such other satisfactory requirements as the Board shall determine from time to time if it finds and determines such person is in need of its assistance or (ii) is a not-for-profit entity granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating in the Commonwealth.

"Federal Act" means the Small Business Investment Act of 1958, 15 U.S.C. § 661 et seq., as amended from time to time.

"Indenture" means any trust agreement, deed of trust, mortgage or other security agreement under which bonds authorized pursuant to this article shall be issued or secured.

"Internal Revenue Code" means the federal Internal Revenue Code of 1986, as amended.

"Lender" means any federal- or state-chartered bank, federal land bank, production credit association, bank for cooperatives, federal- or state-chartered savings institution, building and loan association, small business investment company or any other financial institution qualified within the Commonwealth to originate and service loans, including but not limited to insurance companies, credit unions, investment banking or brokerage companies and mortgage loan companies.

"Loan" means any lease, loan agreement or sales contract as hereinafter defined:

(i) "Lease" means any lease containing an option to purchase the project or projects of the eligible business being financed for a nominal sum upon payment in full, or provision thereof, of all bonds issued in connection with the eligible business and all interest thereon and principal of and premium, if any, thereon and all other expenses in connection therewith.

(ii) "Loan agreement" means an agreement providing for a loan of proceeds from the sale and issuance of bonds by the Authority or by a lender with which the Authority has contracted to loan such proceeds to one or more contracting parties to be used to pay the cost of one or more projects of an eligible business and providing for the repayment of such loan including but not limited to all interest thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith, by such contracting party or parties and which may provide for such loans to be secured or evidenced by one or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties, delivered to the Authority or to a trustee under an indenture pursuant to which the bonds were issued.

(iii) "Sales contract" means a contract providing for the sale of one or more projects of an eligible business to one or more contracting parties and includes but is not limited to a contract providing

for payment of the purchase price including but not limited to all interest thereon, and principal of and premium, if any, thereon and all other expenses in connection therewith, in one or more installments. If the sales contract permits title to a project being sold to an eligible business to pass to such contracting party or parties prior to payment in full of the entire purchase price, it also shall provide for such contracting party or parties to deliver to the Authority or to the trustee under the indenture pursuant to which the bonds were issued, one or more notes, debentures, bonds or other secured or unsecured debt obligations of such contracting party or parties providing for timely payments of the purchase price thereof.

"Municipality" means any county or incorporated city or town in the Commonwealth.

"Preferred lender" means a bank that is subject to continuing supervision and examination by state or federal chartering, licensing, or similar regulatory authority satisfactory to the Authority and that meets the eligibility requirements established by the Authority.

"Qualified energy project" means a solar-powered or wind-powered electricity generation facility located in the Commonwealth on premises owned or leased by an eligible customer-generator, as defined in § 56-594, the electricity generated from which is sold exclusively to the eligible customer-generator under a power purchase agreement used to provide third party financing of the costs of such a renewable generation facility (third party power purchase agreement) pursuant to a pilot program established under Chapter 382 of the Acts of Assembly of 2013 .

"Qualified pollution control project" means environmental pollution control and prevention equipment certified by the business enterprise or eligible business as being needed to comply with the federal Clean Air Act (42 U.S.C. § 7401 et seq.), the federal Clean Water Act (33 U.S.C. § 1251 et seq.), or the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

"Revenues" means any and all fees, rates, rentals, profits and receipts collected by, payable to, or otherwise derived by, the Authority, and all other moneys and income of whatsoever kind or character collected by, payable to, or otherwise derived by, the Authority in connection with loans to any eligible business in furtherance of the purposes of this article.

"Statewide Development Company" means the corporation chartered under this article for purposes of qualification as a state development company as such term is defined in the Federal Act.

1984, c. 749, §§ 9-197, 9-199; 1996, c. 77; 2001, c. 844; 2003, c. 339; 2008, c. 744; 2009, c. 565; 2014, c. 732.

§ 2.2-2280. Declaration of public purpose; Authority created

A. The General Assembly finds and determines that (i) there exists in the Commonwealth a need to assist small and other eligible businesses in the Commonwealth in obtaining financing for new business or in the expansion of existing business in order to promote and develop industrial development and to further the long-term economic development of the Commonwealth through the improvement of its tax base and the promotion of employment and (ii) it is necessary to create a

governmental body to provide financial assistance to small and other eligible businesses in the Commonwealth by providing loans, guarantees, insurance and other assistance to small and other eligible businesses, thereby encouraging the investment of private capital in small and other eligible businesses in the Commonwealth. The creation of this governmental body to assist in such matters is essential to the industrial development of the Commonwealth. In making these determinations, the General Assembly has considered and affirmatively expresses its policy to assist small and other eligible businesses in Virginia, acknowledging that this determination has and will affect competition.

It is further declared that all of the foregoing are public purposes and that the activities of the Authority will serve a public purpose in that they will promote industry, develop trade and increase employment opportunities for the benefit of the inhabitants of the Commonwealth, either through the increase of commerce or through the promotion of safety, health, welfare, convenience or prosperity; and that the necessity of enacting the provisions herein set forth is in the public interest and is so declared as a matter of express legislative determination.

B. The Virginia Small Business Financing Authority is created, with such powers and duties as are set forth in this article, as a public body corporate and as a political subdivision of the Commonwealth. All powers, rights and duties conferred by this article or other provisions of law upon the Authority shall be exercised by the Board.

1984, c. 749, § 9-201; 2001, c. 844; 2009, c. 565.

§ 2.2-2281. Construction of article

Nothing contained in this article shall be construed as a restriction or limitation upon any powers that the Authority might otherwise have under any other law of the Commonwealth, and this article supersedes all other laws in conflict herewith and is cumulative to such powers. Insofar as the provisions of this article are inconsistent with the provisions of any other law, the provisions of this article shall be controlling and the powers conferred by this article shall be regarded as supplemental and additional to powers conferred by any other laws. No proceedings, notice or approval shall be required for the issuance of any bonds or any instrument or the security therefor, except as provided in this article.

The provisions of this article shall be liberally construed to accomplish the purposes of this article.

1984, c. 749, § 9-200; 2001, c. 844.

§ 2.2-2282. Board of directors; membership; terms, compensation and expenses; chairman, vice-chairman, secretary and treasurer; quorum; staff

A. The Board shall consist of the State Treasurer or his designee, the Director of the Department of Small Business and Supplier Diversity, and nine members who are not employees of the Commonwealth or of any political subdivision thereof who shall be appointed by the Governor and who shall have such small business experience as he deems necessary or desirable. The appointment of members of the Board by the Governor shall be subject to confirmation by the General

Assembly. All members of the Board shall be residents of the Commonwealth and shall have full voting privileges. Appointments shall be for terms of four years, except that appointments to fill vacancies shall be made for the unexpired terms. No member appointed by the Governor shall serve more than two complete terms in succession. The members of the Board shall receive no salaries but shall be paid travel and other expenses incurred to attend meetings or while otherwise engaged in the discharge of their duties, all as may be deemed appropriate by the Board.

B. The Governor shall appoint one member as chairman for a two-year term. No member shall be eligible to serve more than two consecutive terms as chairman. Five members of the Board shall constitute a quorum for the transaction of all business of the Authority. The Board shall elect one member from the group of nine members appointed by the Governor as vice-chairman who shall exercise the powers of the chairman in the absence of the chairman. The Board shall elect a secretary and a treasurer, or a secretary-treasurer, who need not be members of the Board and who shall continue to hold such office until their respective successors are elected. The Department of Small Business and Supplier Diversity of the Commonwealth shall serve as staff to the Authority.

1984, c. 749, § 9-202; 1987, c. 688; 1991, c. 190; 1996, cc. 589, 599; 2001, c. 844; 2004, c. 239; 2011, cc. 691, 714; 2013, c. 482.

§ 2.2-2283. Meetings of the Board

Board meetings shall be held at the call of the chairman or whenever any four members so request. In any event, the Board shall meet as necessary to attend to the business of the Authority.

1984, c. 749, § 9-203; 1990, c. 387; 2001, c. 844.

§ 2.2-2284. Executive Director; appointment; duties

The Director of the Department of Small Business and Supplier Diversity shall appoint the Executive Director of the Authority. The Executive Director shall administer, manage and direct the affairs and activities of the Authority in accordance with the policies and under the control and the direction of the Board and the Director of the Department of Small Business and Supplier Diversity. Except as otherwise stated in this article, the Executive Director shall approve all accounts for allowable expenses for the Authority or of any employee or consultant or other person providing services to the Board, and for expenses incidental to the operation of the Authority subject to approval of the Director of the Department of Small Business and Supplier Diversity. The Executive Director shall maintain and be custodian of all books, documents and papers of or filed with the Authority, including but not limited to the minute book or journal of the Authority, and of its official seal. The Executive Director may cause copies to be made of all minutes and other records and documents of the Authority and may in the place and stead of the Secretary of the Authority give certificates under seal of the Authority to the effect that such copies are true copies, and all persons dealing with the Authority may rely on such certificates. The Executive Director also shall perform such other duties as prescribed by the Board in carrying out the purposes of this article.

1984, c. 749, § 9-204; 1990, c. 387; 1996, cc. 589, 599; 2001, c. 844; 2013, c. 482.

§ 2.2-2285. Powers of the Authority

The Authority is granted all powers necessary or appropriate to carry out and effectuate its purposes including, but not limited to, the following powers to:

1. Have perpetual existence as a public body corporate and as a political subdivision of the Commonwealth;

2. Adopt, amend, and repeal bylaws, rules and regulations not inconsistent with this article, to regulate its affairs and to carry into effect the powers and the purposes of the Authority and for the conduct of its business;

3. Sue and be sued in its name including but not limited to bringing actions pursuant to Article 6 (§ 15.2-2650 et seq.) of Chapter 26 of Title 15.2 to determine the validity of any issuance or proposed issuance of its bonds under this article and the legality and validity of all proceedings previously taken or proposed in a resolution of the Authority to be taken for the authorization, issuance, sale and delivery of such bonds and for the payment of the principal thereof and interest thereon;

4. Have an official seal and alter it at will;

5. Maintain an office at such place within the Commonwealth as it may designate;

6. Make and execute contracts and all other instruments necessary and convenient for the performance of its duties and the exercise of its powers under this article upon such terms and conditions it deems appropriate;

7. Employ office personnel, advisers, consultants, professionals and agents as may be necessary in its judgment, and to fix their compensation;

8. Procure insurance against any loss in connection with its property and other assets, including but not limited to loans in such amounts and from such insurers as it deems advisable;

9. Borrow money and issue bonds as provided by this article;

10. Procure insurance or guarantees from any public or private entities, including any department, agency or instrumentality of the United States of America, or, subject to the provisions of and to the extent moneys are available in the fund created by § 2.2-2290, insure or guarantee the payment of any bonds issued by the Authority, including the power to pay premiums on any such insurance or guarantees or other instruments of indebtedness;

11. Receive and accept from any source aid or contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this article (subject, however, to any conditions upon which grants or contributions are made) including, but not limited to gifts or grants from any department, agency or instrumentality of the United States;

12. Enter into agreements with any department, agency or instrumentality of the United States or of the Commonwealth and with lenders and enter into loans with contracting parties for the

purpose of planning, regulating and providing for the financing or assisting in the financing of any eligible business or any project thereof;

13. Enter into contracts or agreements with lenders for the servicing and/or processing of loans;

14. Provide technical assistance to local industrial development authorities and to profit and non-profit entities in the development or operation by, or assistance to, persons engaged in small business enterprises and distribute data and information concerning the encouragement and improvement of small business enterprises in the Commonwealth;

15. To the extent permitted in the proceedings pursuant to which the bonds of the Authority are issued, consent to any modification with respect to the rate of interest, time for, and payment of, any installment of principal or interest, or any other term of any contract, loan, sales contract, lease, indenture or agreement of any kind to which the Authority is a party;

16. To the extent permitted in the proceedings pursuant to which the bonds of the Authority are issued, enter into contracts with any lender containing provisions authorizing the lender to reduce the charges or fees, exclusive of loan payments, to persons unable to pay the regular schedule thereof when, by reason of other income or payment by any department, agency or instrumentality of the United States or the Commonwealth, the reduction can be made without jeopardizing the economic stability of the eligible business being financed;

17. Allocate any of its property to the insurance or guarantee fund established by § 2.2-2290 or to any other fund of the Authority, such property consisting of:

a. Moneys appropriated by the Commonwealth;

b. Premiums, fees and any other amounts received by the Authority with respect to financial assistance provided by the Authority;

c. Proceeds as designated by the Authority from the loan or other disposition of property held or acquired by the Authority;

d. Income from investments that were made by the Authority or on the behalf of the Authority from moneys in one or more of its funds; or

e. Any other moneys made available to the Authority consistent with this article;

18. Use any fund of the Authority for any and all expenses to be paid by the Authority including, but not limited to: (i) any and all expenses for administrative, legal, actuarial, and other services; (ii) all costs, charges, fees and expenses of the Authority relating to the authorizing, preparing, printing, selling, issuing, and insuring of bonds and the funding of reserves; and (iii) all expenses and costs relating to the guaranteeing, insuring or procurement of guarantees, insurance or other instruments providing credit or the enhancement of credit for the bonds;

19. Collect fees and charges the Authority determines to be reasonable in connection with its loans, insurance, guarantees, commitments and servicing thereof;

20. Sell, at public or private sale, with or without public bidding, any obligation held by the Authority;

21. Invest any funds not needed for immediate disbursement, including any funds held in reserve, in any obligations or securities that may be legally purchased by political subdivisions in the Commonwealth or as may be otherwise permitted by § 2.2-2305;

22. Administer the Private Activity Bonds program in Chapter 50 (§ 15.2-5000 et seq.) of Title 15.2 jointly with the Director of the Department of Housing and Community Development and the Virginia Housing Development Authority;

23. Create and establish such funds and accounts as may be necessary or desirable for its purposes;

24. Enter into agreements the purpose of which is to authorize lenders that have been designated as preferred lenders to undertake loan decisioning and processing functions and responsibilities with respect to certain Authority guaranteed loans without obtaining prior Authority approval. Under such agreements, the Authority will provide each preferred lender credit authority equal to an amount determined by the Authority, or an amount equal to the funds available for such guarantees, whichever is less, for the period designated in the allocation. The preferred lender's allocation of credit authority shall be increased only by written permission of the Authority and shall not be restored automatically by the receipt of payments on Authority loans; and

25. Take any action necessary or convenient for the exercise of the powers granted by this article or reasonably implied from them.

1984, c. 749, §§ 9-205, 9-228; 1995, c. 128; 2001, c. 844; 2003, c. 339; 2005, c. 624; 2008, cc. 445, 744.

§ 2.2-2286. Power to condemn

The Authority may condemn property in furtherance of its purposes; provided, that any such condemnation shall be approved by the governing body of the municipality having jurisdiction over the property so condemned. Any property condemned by the Authority shall not be sold or leased by the Authority unless the Authority, preceding the consummation of any such sale or lease, finds and determines that such sale or lease is in furtherance of, or incidental to, the main purposes of the Authority under this article or that such property is no longer needed in furtherance of, or incidental to, such purposes. Any exercise of the power to condemn as authorized by this section shall be in accordance with the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1.

1984, c. 749, § 9-206; 2001, c. 844; 2003, c. 940.

§ 2.2-2287. Power to borrow money and issue bonds

The Authority may borrow money and issue bonds to pay the cost of the projects for which the bonds have been issued, including but not limited to the power to issue bonds to renew or to pay bonds, including the interest thereon. Whenever it deems refunding expedient it may refund any bonds by the issuance of new bonds, whether the bonds to be refunded have or have not matured,

and to issue bonds partly to refund outstanding bonds. Refunding bonds may be sold and the proceeds applied to the purchase, redemption or payment of the bonds to be refunded, or exchanged for the bonds to be refunded. The Authority may undertake the financing of the cost of a project for an eligible business from the proceeds of its bonds by one or more of the following methods: (i) entering into a lease for the facilities of the eligible business being financed; (ii) selling such facilities to the eligible business under a sales contract; (iii) lending the proceeds of the sale of the bonds under a loan agreement with the eligible business; (iv) entering into a loans to lenders transaction in the manner described in § 2.2-2293; or (v) entering into such other transactions as the Board deems appropriate to accomplish the purposes of this article.

1984, c. 749, § 9-207; 2001, c. 844; 2003, c. 339.

§ 2.2-2288. Power to issue bonds to purchase ninety percent guaranteed portion of loans

In addition to and not as a limitation upon the powers to issue bonds as elsewhere expressed in this article, the Authority may, with proceeds of an issue of its bonds, participate with lenders in making or purchasing small business loans, not exceeding as to any one such loan one million dollars in principal amount, to be serviced by such lenders, provided that:

1. The Authority's share shall not exceed ninety percent of the total principal amount of any such loan, and such participation shall be payable with interest at the same times, but not necessarily at the same interest rate, as the share of the lender, and both shares shall be equally and ratably secured by a valid mortgage on, or security interest in, real or personal property or by any other security satisfactory to the Authority to secure payment of the loan; however, the Authority's share of any such loan may equal 100 percent of the total principal amount of the small business loan if the lender participating in the making or purchasing of such small business loan by servicing the loan, purchases 100 percent of the total amount of the bonds issued by the Authority in connection with or allocable to such small business loan;

2. The total principal amount of the Authority's share shall not exceed ninety percent of the value of the property securing the small business loan, unless the amount in excess of ninety percent is:

a. Loaned from available funds that are not proceeds received directly from the sale of the Authority's bonds and are not restricted under the terms of the resolution authorizing, or the indenture securing such bonds, or

b. Insured or guaranteed by a federal agency or by a private insurer qualified to write such insurance in the Commonwealth, insuring a percentage of any claim for loss at least equal to that percentage of the value by which the small business loan exceeds ninety percent thereof;

3. The value of the property securing the small business loan is certified by the participating lender, on the basis of such appraisals, bids, purchase orders, and engineers' certificates as the Authority may require; provided that the value of items purchased and constructed from the proceeds of the small business loan shall not be deemed, for purposes of this section, to exceed the contract price in respect of purchase or construction;

4. The Authority shall not disburse funds under a commitment to participate in a small business loan for the construction or substantial improvement of property until the construction or improvement has been completed, unless a lender furnishes an irrevocable letter of credit or a qualified corporate surety furnishes payment and performance bonds, in either event satisfactory to the Authority and in an aggregate amount equal to the cost of such construction or improvement;

5. No other indebtedness may be secured by a mortgage on, or security interest in, property securing a small business loan made or purchased pursuant to this subdivision without the prior express written authorization of the Authority; and

6. The participating lender agrees to use the proceeds of the small business loan to lend to eligible small businesses in the Commonwealth.

1984, c. 749, § 9-209; 2001, c. 844.

§ 2.2-2289. Power to issue umbrella bonds

In addition to the powers of the Authority to issue bonds, it may issue bonds, the proceeds of which, after payment of the costs of issuance thereof, shall be used to make loans, no single loan to be in excess of ten million dollars in aggregate principal amount, to finance or refinance the projects of eligible businesses. The Authority shall adopt such rules and regulations as are necessary to carry out the purposes of this section and to provide procedures for the making of such loans and the repayment thereof.

1984, c. 749, § 9-210; 1986, c. 297; 2001, c. 844; 2009, c. 565.

§ 2.2-2290. Insurance or guarantee fund

There is created an insurance or guarantee fund of the Authority that may be used for any of the following purposes:

1. To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on its bonds;

2. To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on any instrument executed, obtained or delivered in connection with the issuance and sale of its bonds; and

3. To pay or insure the payment of any fees or premiums necessary to obtain insurance, guarantees, or other instruments or enhancement of credit for or support from any person in connection with financing assistance provided by the Authority under this article including but not limited to working capital loans made by a lender, a preferred lender, or both.

1984, c. 749, § 9-211; 2001, c. 844; 2008, c. 744.

§ 2.2-2291. Security for bonds; fees and expenses; limitations

A. The bonds or instruments with respect to which financial assistance is provided by the Authority shall be secured or unsecured in a manner approved by the Board in its sole discretion.

B. The Board may set the premiums and fees to be paid to it for providing financial assistance under this article. The premiums and fees and expenses set by the Board shall be payable in the amounts, at the time and in the manner that the Board, in its discretion, requires. The premiums and fees need not be uniform among transactions and may vary in amount among transactions and at different stages during the terms of the transactions.

C. No portion of the proceeds of an issue of the Authority's bonds that are exempt under federal taxation as qualified bonds under Section 141(e) of the Internal Revenue Code shall be used to provide facilities prohibited in Section 147(e) of the Internal Revenue Code .

1984, c. 749, §§ 9-212, 9-213, 9-215; 2001, c. 844; 2009, c. 565.

§ 2.2-2292. Public hearing and approval

Whenever federal law requires public hearings and public approval as a prerequisite to obtaining federal tax exemption for the interest paid on private activity bonds under Section 147(f) of the Internal Revenue Code, unless otherwise specified by federal law or regulation, the public hearing for private activity bonds of the Authority shall be conducted by the Authority and the procedure for the public hearing and public approvals shall be as follows:

1. For a public hearing by the Authority:

a. Notice of the hearing shall be published once a week for two successive weeks in a newspaper published or having general circulation in the municipality in which the facility to be financed is to be located of intention to provide financing for a named applicant. The applicant shall pay the cost of notification. The notice shall also be mailed or otherwise delivered to the clerk of the local governing body of the municipality. The notice shall specify the time and place of hearing at which persons may appear and present their views. The hearing shall be held not less than six days nor more than 21 days after the second notice shall appear in such newspaper. The hearing may be held at any place within the Commonwealth determined by the Board.

b. The notice shall contain (i) the name and address of the Authority; (ii) the name and address of the principal place of business, if any, of the applicant seeking financing; (iii) the maximum dollar amount of financing sought; and (iv) the type of business and purpose and specific location, if known, of the facility to be financed.

c. Every request for private activity bond financing when submitted to the Authority shall be accompanied by a statement in the following form:

Name of Applicant: _____

Facility: _____

Date: _____

Maximum amount of financing sought: $____

Estimated taxable value of the facility's real property in the municipality in which it is located. $_____

Estimated taxable value of the facility's real property once constructed or expanded. $_____

Estimated real property tax per year using present tax rates on the facility's real property once constructed or expanded. $_____

Estimated personal property tax per year from property to be located in expanded or constructed facility using present tax rate. $_____

Estimated merchants' capital tax per year from property to be located in expanded or constructed facility using present tax rate. $_____

Estimated dollar value per year of goods and services that will be purchased in the Commonwealth during construction or expansion of facility. $_____

Estimated dollar value per year of goods and services that will be purchased in the Commonwealth for the operation of the facility. $_____

Estimated dollar value per year of goods and services that will be produced and sold from the facility. $_____

Estimated number of employees during construction or expansion _____

Estimated number of regular employees on a year round basis during operation of the facility _____

Average annual salary per regular employee during operation of the facility. $_____

Estimated payroll for labor during construction or expansion of the facility. $_____

If any of the above questions do not apply to the eligible business being financed, indicate by writing N/A (not applicable) on the appropriate line.

2. For public approval, the Governor is appointed by this article as the applicable elected representative within the meaning of Section 147(f)(2)(E) of the Internal Revenue Code.

1984, c. 749, § 9-216; 2001, c. 844; 2003, c. 339; 2009, c. 565.

§ 2.2-2293. Loans to lenders; conditions

The Authority may make, and undertake commitments to make, loans to lenders under terms and conditions requiring the proceeds thereof to be used by the lenders to make loans to eligible small businesses. Loan commitments or actual loans may be originated through and serviced by any such lender. As a condition to a lender's participating in the loan, the lender shall agree to use the proceeds of the loan within a reasonable period of time to make loans or purchase loans to provide to eligible small businesses, or finance the projects of eligible small businesses, in the Commonwealth or, if the lender has made a commitment to make loans to eligible small businesses on the basis of a commitment from the Authority to purchase the loans, the lender shall make the loans within a reasonable period of time.

1984, c. 749, § 9-217; 2001, c. 844.

§ 2.2-2294. Investment in, purchase or assignment of loans; conditions

The Authority may invest in, purchase or make commitments to invest in or purchase, and take assignments or make commitments to take assignments, of loans made by lenders for the acquisition, construction, rehabilitation, expansion or purchase of a project for eligible business.

1984, c. 749, § 9-218; 2001, c. 844; 2003, c. 339.

§ 2.2-2295. Regulations of the Authority

Prior to carrying out the powers granted under §§ 2.2-2293 and 2.2-2294, the Authority shall adopt rules and regulations governing its activities including but not limited to rules and regulations relating to the following:

1. Procedures for the submission of requests or invitations and proposals for making loans to lenders and the investment in, purchase, assignment and sale of loans;

2. The reinvestment by a lender of the proceeds, or an equivalent amount, from any loan to a lender in loans to provide financing for eligible business in the Commonwealth;

3. Assurances that the eligible business to be financed will improve employment conditions or otherwise improve industrial development in the Commonwealth;

4. Rates, fees, charges, and other terms and conditions for originating or servicing loans in order to protect against realization of an excessive financial return or benefit by the originator or servicer;

5. The type and amount of collateral or security to be provided to assure repayment of loans to lenders made by the Authority;

6. The type of collateral, payment bonds, performance bonds or other security to be provided for any loans made by a lender for construction loans;

7. The nature and amount of fees to be charged by the Authority to provide for expenses and reserves of the Authority;

8. Standards and requirements for the allocation of available money among lenders and the determination of the maturities, terms, conditions and interest rates for loans made, purchased, sold, assigned or committed pursuant hereto;

9. Commitment requirements for financing by lenders involving money provided, directly or indirectly, by the Authority; or

10. Any other appropriate matters related to the duties or exercise of the Authority's powers.

1984, c. 749, § 9-219; 2001, c. 844; 2003, c. 339.

§ 2.2-2296. How bonds paid and secured

Except as may otherwise be expressly provided by the Authority in proceedings relating to a particular issue of bonds, every issue of its bonds shall be payable solely out of any revenues of the Authority. The bonds additionally may be secured by a pledge of any grant, contribution or guarantee from the federal government or any person or a pledge by the Authority of any revenues from any source.

1984, c. 749, § 9-220; 2001, c. 844.

§ 2.2-2297. Liability of Commonwealth, political subdivisions and members of Board

No bonds issued or loans or loan guarantees made by the Authority under this article shall constitute a debt, liability or general obligation of the Commonwealth or any political subdivision thereof (other than the Authority), or a pledge of the faith and credit of the Commonwealth or any political subdivision thereof (other than the Authority), but shall be payable solely as provided by the Authority. No member or officer of the Board nor any person executing the bonds, loans, or loan guarantees shall be liable personally on the bonds, loans, or loan guarantees by reason of the issuance thereof. Each bond issued or loan or loan guarantee made under this article shall contain on the face thereof a statement that neither the Commonwealth, nor any other political subdivision thereof, shall be obligated to pay the same or the interest thereon or other costs incident thereto except from the revenue or money pledged by the Authority and that neither the faith and credit nor the taxing power of the Commonwealth or any political subdivision thereof is pledged to the payment of the principal of, or the interest on, such bond, loan, or loan guarantee.

1984, c. 749, § 9-221; 1997, c. 815; 2001, c. 844.

§ 2.2-2298. Authorization of bonds by resolution; contents of bond sale; manner

The bonds shall be authorized by a resolution of the Board, shall bear such date or dates, and shall mature at such time as such resolution may provide, except that no bond shall mature more than fifty years from the date of issue. The bonds shall (i) bear interest at such rates, including variations of such rates; (ii) be in such denominations; (iii) be in such form; (iv) carry such registration privileges; (v) be executed in such manner; (vi) be payable in such medium of payment, at such place; and (vii) be subject to such terms of redemption, including redemption prior to maturity, as the resolution may provide. Except as expressly provided otherwise in this article, the provisions of other laws of the Commonwealth relating to the issuance of revenue bonds shall not apply to bonds issued by the Authority. Bonds of the Authority may be sold by the Authority at public or private sale and at such price as the Authority determines.

1984, c. 749, § 9-222; 2001, c. 844.

§ 2.2-2299. Resolution authorizing issuance of bonds; provisions

Any resolution authorizing the issuance of bonds may contain provisions for:

1. Pledging all or any part of the revenues of the Authority to secure the payment of the bonds, subject to the terms of the proceedings relating to other bonds of the Authority as may then exist;

2. Pledging all or any part of the assets of the Authority, including loans and obligations securing the same, to secure the payment of the bonds, subject to the terms of the proceedings relating to other bonds of the Authority as may then exist;

3. The use and disposition of the gross income from loans owned by the Authority and payment of the principal of loans owned by the Authority;

4. The setting aside of reserves or sinking funds and the regulations and disposition thereof;

5. Limitations on the purposes to which the proceeds from the sale of bonds may be applied and pledging the proceeds to secure the payment of the bonds;

6. Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

7. The procedure, if any, by which the terms of any of the proceedings under which the bonds are being issued may be amended or abrogated, the number or percentage of bondholders who or which must consent thereto, and the manner in which the consent may be given;

8. The vesting in a trustee of such property, rights, powers and duties in trust as the Authority may determine, and limiting or abrogating the right of bondholders to appoint a trustee or limiting the rights, powers and duties of the trustee;

9. Defining the act or omissions to act that shall constitute a default and the obligations or duties of the Authority to the holders of the bonds, and providing for the rights and remedies of the holders of the bonds in the event of default, which rights and remedies may include the general laws of the Commonwealth and other provisions of this article; or

10. Any other matter, of like or different character, which in any way affects the security or protection of the holders of the bonds.

1984, c. 749, § 9-223; 2001, c. 844.

§ 2.2-2300. Pledge by Authority

Any pledge made by the Authority shall be valid and binding from the time when the pledge was made. The revenues or properties so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any other instrument by which a pledge is created need be recorded.

1984, c. 749, § 9-224; 2001, c. 844.

§ 2.2-2301. Purchase of bonds of Authority

The Authority, subject to the provisions in proceedings relating to outstanding bonds as may then exist, may purchase bonds out of any funds available therefor, which shall thereupon be cancelled,

at any reasonable price which, if the bonds are then redeemable, shall not exceed the redemption price (and premium, if any) then applicable plus accrued interest to the redemption date thereof.

1984, c. 749, § 9-225; 2001, c. 844.

§ 2.2-2302. Bonds secured by indenture; contents; expenses; how treated

The bonds may be secured by an indenture by and between the Authority and a corporate trustee that may be any bank or other corporation having the power of a trust company or any trust company within or without the Commonwealth. The indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Authority in relation to the exercise of its powers and the custody, safekeeping and application of all money. The Authority may provide by the indenture for the payment of the proceeds of the bonds and revenues to the trustee under the indenture or other depository, and for the method of disbursement thereof, with such safeguards and restrictions as the Authority may determine. If the bonds are secured by an indenture, the bondholders shall have no authority to appoint a separate trustee to represent them.

1984, c. 749, § 9-226; 2001, c. 844.

§ 2.2-2303. Signatures of prior members or officers; validity

In the event that any of the members or officers of the Board cease to be members or officers of the Board prior to the delivery of any bonds signed by them, their signatures or facsimiles thereof shall nevertheless be valid and sufficient for all purposes as if they had remained in office until such delivery.

1984, c. 749, § 9-227; 2001, c. 844.

§ 2.2-2304. Deposit of money; expenditures; security for deposits

All money of the Authority, except as otherwise authorized in this article, shall be deposited as soon as practicable in a separate account in banks or trust companies organized under the laws of the Commonwealth or in national banking associations doing business in the Commonwealth. The money in such accounts shall be paid by checks signed by the Executive Director or other officer or employees of the Authority as the Authority shall authorize. All deposits of money shall, if required by the Authority, be secured in such manner as the Authority determines to be prudent, and all banks or trust companies are authorized to give security for the deposits.

1984, c. 749, § 9-229; 2001, c. 844.

§ 2.2-2305. Contracts with holders of bonds; how money secured

Notwithstanding the provisions of § 2.2-2304, the Authority may contract with the holders of any of its bonds as to the custody, collection, securing, investment and payment of any money of the Authority and of any money held in trust or otherwise for the payment of bonds, and to carry out such contract. Money held in trust or otherwise for the payment of bonds or in any way to secure

bonds and deposits of money may be secured in the same manner as money of the Authority, and all banks and trust companies are authorized to give security for the deposits.

1984, c. 749, § 9-230; 2001, c. 844.

§ 2.2-2306. Bondholder protection

Subsequent amendments to this article shall not limit the rights vested in the Authority with respect to any agreements made with, or remedies available to, the holders of bonds issued under this article prior to the enactment of the amendments until the bonds, together with all interest thereon, and all costs and expenses in connection with any proceeding by or on behalf of the holders, are fully met and discharged.

1984, c. 749, § 9-231; 2001, c. 844.

§ 2.2-2307. Bonds as legal investments and securities

The bonds issued by the Authority in accordance with this article shall be legal investments in which all public officers or public bodies of the Commonwealth, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on insurance business, all banks, bankers, banking associations, trust companies, savings institutions, building and loan associations, and investment companies, all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are now or may later be authorized to invest in bonds or in other obligations of the Commonwealth, may invest funds, including capital, in their control or belonging to them. The bonds shall also be securities that may be deposited with and received by all public officers and bodies of the Commonwealth or any agency or political subdivision of the Commonwealth and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the Commonwealth is now or may be later authorized by law.

1984, c. 749, § 9-234; 1996, c. 77; 2001, c. 844.

§ 2.2-2308. Expenses of Authority; liability of Commonwealth or political subdivision prohibited

All expenses incurred by the Authority in carrying out the provisions of this article shall be payable solely from funds provided under this article, and nothing in this article shall be construed to authorize the Authority to incur indebtedness or liability on behalf of or payable by the Commonwealth or any of its other political subdivisions.

1984, c. 749, § 9-232; 2001, c. 844.

§ 2.2-2309. Creation, administration, and management of Virginia Export Fund

A. In addition to any other fund or account the Authority may create pursuant to subdivision 23 of § 2.2-2285, there shall be a permanent fund known as the Virginia Export Fund (the Fund). The Fund shall be comprised of (i) sums appropriated to it by the General Assembly, (ii) receipts by the Fund from loans or loan guarantees made against it, (iii) all income from the investment of moneys held by the Fund, and (iv) any other sums designated for deposit to the Fund from any

source, public or private. The Fund shall be administered and managed by the Authority, and all moneys in the Fund shall be used to provide loans or loan guarantees as provided in subsection D. Any balances remaining in the Fund shall not revert to the general fund but shall be retained in order to make additional loans or loan guarantees.

B. All moneys belonging to the Fund shall be deposited to the credit of the State Treasurer and recorded on the books of the State Comptroller. Earnings from investments and interest shall be returned to the Fund.

C. The Authority, or its designated agent, may collect moneys due to the Fund. Proceedings to recover moneys due to the Fund may be instituted by the Authority in the name of the Fund in any appropriate court.

D. The Fund shall be used to make loans or to provide a guarantee for up to ninety percent of the principal amount of any commercial loan or line of credit made by a lender for the purpose of facilitating the sale of goods, products, or services outside of the United States by persons, firms, or corporations utilizing a Virginia air, land, or sea port to ship such goods, products, or services. Such guarantee shall not exceed one million dollars.

E. The Authority shall determine the terms and conditions of any loans or loan guarantee made against the Fund and may allow for use of the Fund in single or multiple transactions. No loan shall exceed a term of twelve months, nor shall a loan guarantee exceed a term of eighteen months. In the case of loans, the Authority shall charge an annual interest rate. In the case of guarantees, the Authority shall charge an annual guarantee fee. However, the Authority may waive such guarantee fees in an economically distressed area as defined in § 58.1-439. In connection with applications for loans or loan guarantees made against the Fund, the Authority may require the production of any document, instrument, certificate, legal opinion, or other information it deems necessary or convenient.

F. All loans or loan guarantees made against the Fund shall be approved by the Board or an authorized committee or subcommittee thereof.

1997, c. 815, §§ 9-228.1, 9-228.2, 9-228.3, 9-228.4; 1999, c. 785; 2001, c. 844.

§ 2.2-2310. Creation, administration, and management of Virginia Small Business Growth Fund

A. In addition to any other fund or account the Authority may create pursuant to subdivision 23 of § 2.2-2285, there shall be a permanent fund known as the Virginia Small Business Growth Fund (the "Fund"). The Fund shall be comprised of (i) sums appropriated to it by the General Assembly, (ii) all income from the investment of moneys held by the Fund, and (iii) any other sums designated for deposit to the Fund from any source, public or private. The Fund shall be administered and managed by the Authority, and all moneys in the Fund shall be used to create special reserve funds to cover potential future losses from the loan portfolios of participating banks and lending

institutions as provided in subsection D. Any remaining balances in the Fund shall not revert to the general fund but shall be retained in order to create additional special reserve funds.

B. All moneys belonging to the Fund shall be deposited to the credit of the State Treasurer and recorded on the books of the State Comptroller. Earnings from investments and interest shall be returned to the Fund.

C. The Authority, or its designated agent, may collect moneys owed to the Fund. Proceedings to recover moneys owed to the Fund may be instituted by the Authority in the name of the Fund in any appropriate court.

D. The Fund shall be used as a special reserve fund to cover potential future losses from the loan portfolios of participating banks and lending institutions. The Authority shall (i) work with banks and lending institutions to establish a separate account for the Virginia Small Business Growth Fund in each participating bank or lending institution and (ii) deposit into such accounts moneys from the Fund in an amount at least equal to the total of the sum of the bank or lending institution's and the individual borrower's deposits into such account. Such matching sum by the Authority shall not exceed fourteen percent of the principal amount of the loan.

E. The Authority shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof. In connection with applications for claims made against the Fund, the Authority may require the production of any document, instrument, certificate, legal opinion, or any other information it deems necessary or convenient. All claims made against the Fund shall be approved by the Board or an authorized committee or subcommittee thereof. All claims made against each account shall be reported to the Board or an authorized committee thereof.

1997, c. 870, §§ 9-228.5, 9-228.6, 9-228.7, 9-228.8; 2000, c. 40; 2001, c. 844.

§ 2.2-2311. Repealed

Repealed by Acts 2015, cc. 696 and 697, cl. 2.

§ 2.2-2311.1. Creation, administration, and management of the Small, Women-owned, and Minority-owned Business Loan Fund

A. For the purposes of this section:

"Eligible small business" means any person engaged in a for-profit business enterprise in the Commonwealth and such enterprise has (i) $10 million or less in annual gross income under generally accepted accounting principles for up to each of its last three fiscal years or lesser time period if it has been in existence less than three years, (ii) fewer than 250 employees, or (iii) a net worth of $1 million or less, or such business enterprise meets such other satisfactory requirements as the Board shall determine from time to time upon a finding that such business enterprise is in need of assistance.

"Fund" means the Small, Women-owned, and Minority-owned Business Loan Fund.

"Minority-owned business" means a for-profit small business concern that is majority-owned by one or more individuals of an ethnic or racial minority. In the case of a corporation, a majority of the stock shall be owned by one or more such individuals and the management and daily business operations shall be controlled by one or more of the individuals of an ethnic or racial minority who own it.

"Women-owned business" means a for-profit small business concern that is majority-owned by one or more women. In the case of a corporation, a majority of the stock shall be owned by one or more women and the management and daily business operations shall be controlled by one or more of the women who own it.

B. There is created a permanent revolving loan fund to be known as the Small, Women-owned, and Minority-owned Business Loan Fund. The Fund shall be comprised of (i) moneys appropriated to the Fund by the General Assembly, (ii) moneys collected by the Authority as a result of loan repayments, (iii) all income from the investment of moneys held by the Fund, and (iv) any other moneys designated for deposit to the Fund from any source, public or private. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used to provide direct loans to eligible small, women-owned, and minority-owned businesses. The Fund shall be managed and administered by the Authority with guidance from the Director of the Department of Small Business and Supplier Diversity.

C. The Authority, or its designated agents, shall determine the qualifications, terms, and conditions for the use of the Fund and the accounts thereof.

2015, cc. 696, 697; 2016, c. 519.

§ 2.2-2312. Annual report; audit

The Authority shall, within 120 days of the close of each fiscal year, submit an annual report of its activities for the preceding fiscal year to the Governor and the chairmen of the House Committee on Appropriations and the Senate Committee on Finance. Each report shall set forth, for the preceding fiscal year, a complete operating and financial statement for the Authority and any loan fund or loan guarantee fund the Authority administers or manages. The Auditor of Public Accounts or his legally authorized representatives shall at least once in a year audit the books and accounts of the Authority and any loan fund or loan guarantee fund the Authority administers or manages.

1984, c. 749, § 9-235; 1997, c. 815; 2001, c. 844.

§ 2.2-2313. Exemption from taxation

The Authority is declared to be performing a public function and to be a public body corporate and a political subdivision of the Commonwealth. Accordingly, the income, including any profit made on the sale thereof from all bonds issued by the Authority, shall at all times be exempt from all

taxation by the Commonwealth or any public subdivision thereof. If, after all indebtedness and other obligations of the Authority are discharged, the Authority is dissolved, its remaining assets shall inure to the benefit of the Commonwealth.

1984, c. 749, § 9-233; 2001, c. 844.

§ 2.2-2314. Administrative Process Act not applicable

The provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to this article.

1984, c. 749, § 9-208; 2001, c. 844.

Article 8 - VIRGINIA TOURISM AUTHORITY

§ 2.2-2315. Short title; declaration of public purpose; Authority created

A. This article shall be known and may be cited as the Virginia Tourism Authority Act.

B. The General Assembly finds and declares that:

1. There exists in all geographical regions of the Commonwealth a plethora of tourist attractions, including cultural, historical, commercial, educational, and recreational activities, locations, and sources of entertainment;

2. Such tourist attractions are of potential interest to millions of people who reside both in and outside the Commonwealth;

3. Promotion of tourism in the Commonwealth is necessary to increase the prosperity of the people of the Commonwealth;

4. A state tourism development authority is therefore necessary to stimulate the tourism segment of the economy by promoting, advertising, and marketing the Commonwealth's many tourist attractions and by coordinating other private and public efforts to do the same; and

5. The film industry is a legitimate and important part of economic development in the Commonwealth.

The General Assembly determines that the creation of an authority for this purpose is in the public interest, serves a public purpose and will promote the health, safety, welfare, convenience or prosperity of the people of the Commonwealth.

C. The Virginia Tourism Authority is created, with the duties and powers set forth in this article, as a public body corporate and as a political subdivision of the Commonwealth. The Authority is constituted a public instrumentality exercising public and essential governmental functions, and the exercise by the Authority of the duties and powers conferred by this article shall be deemed and held to be the performance of an essential governmental function of the Commonwealth. The exercise of the powers granted by this article shall be in all respects for the benefit of the inhabitants of the Commonwealth and the increase of their commerce and prosperity. The Authority may do business as the "Virginia Tourism Corporation," and any references in the Code of Virginia

or in any regulations adopted thereunder that refer to the Virginia Tourism Corporation shall, whenever necessary, be deemed to refer to the Authority.

1999, cc. 852, 881, §§ 2.1-548.53, 2.1-548.54, 2.1-548.56; 2001, c. 844.

§ 2.2-2316. Executive Director; Board of Directors; members and officers

A. Notwithstanding the provisions of § 2.2-2318, all powers, rights and duties conferred by this article or other provisions of law upon the Authority shall be exercised by an Executive Director with the advice and comment of a Board of Directors. The Board of Directors shall be an advisory board within the meaning of § 2.2-2100.

B. The Board of Directors shall consist of the Secretary of Agriculture and Forestry, the Secretary of Commerce and Trade, the Secretary of Finance, the Secretary of Natural Resources, the Lieutenant Governor, and 12 members appointed by the Governor, subject to confirmation by the General Assembly. The members of the Board appointed by the Governor shall serve terms of six years. Any appointment to fill a vacancy on the Board shall be made for the unexpired term of the member whose death, resignation or removal created the vacancy. All members of the Board shall be residents of the Commonwealth. Members may be appointed to successive terms on the Board of Directors. The Governor shall make appointments in such a manner as to ensure the widest possible geographical representation of all parts of the Commonwealth.

Each member of the Board shall be reimbursed for his reasonable expenses incurred in attendance at meetings or when otherwise engaged in the business of the Authority and shall be compensated at the rate provided in § 2.2-2104 for each day or portion thereof in which the member is engaged in the business of the Authority.

C. The Governor shall designate one member of the Board as chairman. The Board may elect one member as vice-chairman, who shall exercise the powers of chairman in the absence of the chairman or as directed by the chairman. The Secretary of Agriculture and Forestry, the Secretary of Commerce and Trade, the Secretary of Finance, the Secretary of Natural Resources, and the Lieutenant Governor shall not be eligible to serve as chairman or vice-chairman.

D. Meetings of the Board shall be held at the call of the chairman or of any seven members. Nine members of the Board shall constitute a quorum for the transaction of the business of the Authority. An act of the majority of the members of the Board present at any regular or special meeting at which a quorum is present shall be an act of the Board of Directors.

E. Notwithstanding the provisions of any other law, no officer or employee of the Commonwealth shall be deemed to have forfeited or shall have forfeited his office or employment by reason of acceptance of membership on the Board or by providing service to the Authority.

1999, cc. 852, 881, § 2.1-548.57; 2000, c. 899; 2001, c. 844; 2007, c. 779; 2010, c. 101; 2015, c. 280.

§ 2.2-2317. Appointment and duties of Executive Director

The Governor shall appoint an Executive Director of the Authority, who shall serve as President and chief executive officer of the Authority. The Executive Director shall not be a member of the Board. The Governor shall set the salary and other compensation of the Executive Director, and shall approve any changes in the Executive Director's salary or compensation. The Executive Director shall serve as the ex officio secretary of the Board and shall administer, manage and direct the affairs and activities of the Authority. He shall attend meetings of the Board, shall keep a record of the proceedings of the Board and shall maintain and be custodian of all books, documents and papers of the Authority, the minute book of the Authority and its official seal. He may cause copies to be made of all minutes and other records and documents of the Authority and may give certificates under seal of the Authority to the effect that the copies are true copies, and all persons dealing with the Authority may rely upon the certificates. He shall also perform other duties as is necessary to carry out the purposes of this article. The Executive Director shall employ or retain such agents or employees subordinate to him as may be necessary to fulfill the duties of the Authority as conferred upon the Executive Director. Employees of the Authority, including the Executive Director, shall be eligible for membership in the Virginia Retirement System and participation in all of the health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law.

1999, cc. 852, 881, § 2.1-548.58; 2001, c. 844; 2007, c. 779.

§ 2.2-2318. Powers of Authority

The Authority, acting through the Executive Director, shall be granted all powers necessary or appropriate to carry out and to effectuate its purposes, including the following to:

1. Have perpetual succession as a public body corporate and as a political subdivision of the Commonwealth;

2. Adopt, amend and repeal bylaws, rules and regulations, not inconsistent with this article for the administration and regulation of its affairs, to carry into effect the powers and purposes of the Authority and the conduct of its business;

3. Sue and be sued in its own name;

4. Have an official seal and alter it at will although the failure to affix this seal shall not affect the validity of any instrument executed on behalf of the Authority;

5. Maintain an office at any place within or without the Commonwealth that it designates;

6. Make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its powers and functions under this article;

7. Acquire real or personal property, or any interest therein, by purchase, exchange, gift, assignment, transfer, foreclosure, lease or otherwise, including rights or easements, and hold, manage, operate or improve such property;

8. Sell, convey, mortgage, pledge, lease, exchange, transfer and otherwise dispose of all or any part of its properties and assets;

9. Employ officers, employees, agents, advisers and consultants, including without limitation, financial advisers and other technical advisers and public accountants and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality;

10. Procure insurance, in amounts and from insurers of its choice, or provide self-insurance, against any loss, cost, or expense in connection with its property, assets or activities, including insurance or self-insurance against liability for its acts or the acts of its directors, employees or agents and for the indemnification of the members of its Board and its employees and agents;

11. Receive and accept from any source aid, grants and contributions of money, property, labor or other things of value to be held, used and applied to carry out the purposes of this article subject to the conditions upon which the aid, grants or contributions are made;

12. Enter into agreements with any department, agency or instrumentality of the United States, the Commonwealth, the District of Columbia or any state for purposes consistent with its mission;

13. Establish and revise, amend and repeal, and charge and collect, fees and charges in connection with any activities or services of the Authority;

14. Make grants to local governments with any funds of the Authority available for this purpose;

15. Develop policies and procedures generally applicable to the procurement of goods, services, and construction based on competitive principles;

16. Issue periodicals and carry and charge for advertising therein;

17. Raise money in the corporate, nonprofit, and nonstate communities to finance the Authority's activities;

18. Support and encourage each locality to foster its own tourism development programs;

19. Enter into agreements with public or private entities that provide participating funding to establish and operate tourism centers, funded jointly by the entity and the Authority, as shall be determined by the Executive Director, and as approved by the Authority;

20. Encourage, stimulate, and support tourism in the Commonwealth by promoting, marketing, and advertising the Commonwealth's many tourist attractions and locations;

21. Encourage, stimulate, and support the film industry in the Commonwealth;

22. Do all things necessary or proper to administer and manage the Cooperative Tourism Advertising Fund and the Governor's Motion Picture Opportunity Fund;

23. Update a travel guide for the disabled in the first year of every biennium beginning in fiscal year 2003;

24. Develop a comprehensive plan to promote destinations of historical and other significance located throughout the Commonwealth in anticipation of the 400th anniversary of the Jamestown settlement; and

25. Do any act necessary or convenient to the exercise of the powers granted or reasonably implied by this article and not otherwise inconsistent with state law.

1999, cc. 852, 881, § 2.1-548.59; 2001, cc. 67, 844; 2005, c. 360; 2007, c. 779.

§ 2.2-2319. Cooperative Marketing Fund

A. There is established the Cooperative Marketing Fund (Marketing Fund) for the purpose of encouraging, stimulating, and supporting the tourism segment of the economy of the Commonwealth and the direct and indirect benefits that flow from the success of such industry. To create the public-private partnership envisioned by such Marketing Fund, the Marketing Fund shall be established out of the sums appropriated by the General Assembly for the purpose of matching private funds to be used for the promotion, marketing, and advertising of the Commonwealth's many tourist attractions and locations. Proposals shall be eligible for matching grant funds under this section only if they promote, benefit, market and advertise locations or destinations that are (i) solely within the territorial limits of the Commonwealth or (ii) in both the Commonwealth and any adjoining state, in which instance the matching grant funds should be used to promote locations and destinations located within the territorial limits of the Commonwealth. The funds made available in the appropriations act for the Marketing Fund shall be administered and managed by the Authority.

B. In the event more than one person seeks to take advantage of the benefits conferred by this section and the Marketing Fund is insufficient to accommodate all such requests, the matching formula shall be adjusted, to the extent practicable, to afford each request for which there is a valid public purpose an equitable share.

C. All persons seeking to receive or qualify for such matching funds shall apply to the Authority in January of the year preceding the fiscal year for which funds are sought, and to the extent the Governor concurs in such funding request, it shall be reflected in the Governor's Budget Bill filed pursuant to § 2.2-1509. The application shall set forth the applicant's proposals in detail. The Authority shall develop guidelines setting forth the criteria it will weigh in considering such applications; such guidelines may indicate a preference for proposals submitted by nonprofit organizations. The guidelines may require that as a condition of receiving any grant or other incentive that is based on employment goals, a recipient company must provide copies of employer quarterly payroll reports provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal.

1999, cc. 852, 881, § 2.1-548.60; 2001, c. 844; 2002, c. 442; 2013, c. 547.

§ 2.2-2320. Governor's Motion Picture Opportunity Fund

There is created a Governor's Motion Picture Opportunity Fund (the Fund) to be used, in the sole discretion of the Governor, to support the film and video industries in Virginia by providing the means for attracting production companies and producers who make their projects in the Commonwealth using Virginia employees, goods and services. The Fund shall consist of any moneys appropriated to it in the general appropriation act or revenue from any other source. The Fund shall be established on the books of the Comptroller and any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest earned on the Fund shall be credited to the Fund.

The Fund shall be used by the Governor to assist production companies or producers that meet the eligibility requirements set forth in the guidelines. The Authority shall assist the Governor in the development of guidelines for the use of the Fund. The guidelines may require that as a condition of receiving any grant or loan incentive that is based on employment goals, a recipient company must provide copies of employer quarterly payroll reports provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal. The guidelines should include provisions for geographic diversity and a cap on the amount of money available for a certain project. The types of projects eligible for consideration will be feature films, children's programs, documentaries, television series or other television programs designed to fit a thirty-minute or longer format slot. Projects not eligible are industrial, corporate or commercial projects, education programs not intended for rebroadcast, adult films, music videos and news shows or reports.

1999, cc. 852, 881, § 2.1-548.61; 2001, c. 844; 2013, c. 547.

§ 2.2-2321. Grants from Commonwealth

The Commonwealth may make grants of money or property to the Authority for the purpose of enabling it to carry out its corporate purposes and for the exercise of its powers. This section shall not be construed to limit any other power the Commonwealth may have to make grants to the Authority.

1999, cc. 852, 881, § 2.1-548.62; 2001, c. 844.

§ 2.2-2322. Deposit of money; expenditures; security for deposits

A. All money of the Authority, except as otherwise authorized by law or this article, shall be deposited in accounts in banks or trust companies organized under the laws of the Commonwealth or in national banking associations located in Virginia or in savings institutions located in Virginia organized under the laws of the Commonwealth or the United States. The money in these accounts shall be paid by check signed by the Executive Director or any other officer or employee designated by the Authority. All deposits of money shall, if required by the Authority, be secured in a manner determined by the Authority to be prudent, and all banks, trust companies and savings institutions are authorized to give security for the deposits.

B. Funds of the Authority not needed for immediate use or disbursement, including any funds held in reserve, may be invested in (i) obligations or securities that are considered lawful investments for fiduciaries, both individual and corporate, as set forth in § 2.2-4519, (ii) bankers' acceptances, or (iii) repurchase agreements, reverse repurchase agreements, rate guarantee or investment agreements or other similar banking arrangements.

1999, cc. 852, 881, § 2.1-548.65; 2001, c. 844.

§ 2.2-2323. Forms of accounts and records; annual reports; audit

The Authority shall maintain accounts and records showing the receipt and disbursement of funds from whatever source derived in a form as prescribed by the Auditor of Public Accounts. Such accounts and records shall correspond as nearly as possible to accounts and records maintained by corporate enterprises.

The accounts of the Authority shall be audited annually by the Auditor of Public Accounts, or his legally authorized representatives, and the costs of such audits shall be borne by the Authority. The Authority shall, following the close of each fiscal year, submit an annual report of its activities for the preceding year to the Governor. Each report shall set forth a complete operating and financial statement for the Authority during the fiscal year it covers.

1999, cc. 852, 881, § 2.1-548.66; 2001, c. 844.

§ 2.2-2324. Exemption from taxation

As set forth in subsection C of § 2.2-2315, the Authority shall be performing an essential governmental function in the exercise of the powers conferred upon it by this article. Accordingly, the Authority shall not be required to pay any taxes or assessments upon any project or any property or upon any operations of the Authority or the income therefrom. Agents, lessees, sublessees, or users of tangible personal property owned by or leased to the Authority also shall not be required to pay any sales or use tax upon such property or the revenue derived therefrom.

1999, cc. 852, 881, § 2.1-548.64; 2001, c. 844.

§ 2.2-2325. Exemptions from personnel and procurement procedures

The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and the Virginia Personnel Act (§ 2.2-2900 et seq.) shall not apply to the Authority.

1999, cc. 852, 881, § 2.1-548.63; 2001, c. 844.

§ 2.2-2326. Sovereign immunity

No provisions of this article nor act of the Authority, including the procurement of insurance or self-insurance, shall be deemed a waiver of any sovereign immunity to which the Authority or its directors, officers, employees, or agents are otherwise entitled.

1999, cc. 852, 881, § 2.1-548.67; 2001, c. 844.

§ 2.2-2327. Liberal construction of article

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated.

2002, c. 491.

Article 9 - VIRGINIA NATIONAL DEFENSE INDUSTRIAL AUTHORITY

§§ 2.2-2328 through 2.2-2335. Repealed
Repealed by Acts 2012, cc. 803 and 835, cl. 52.

Article 10 - FORT MONROE AUTHORITY ACT

§ 2.2-2336. Short title; declaration of public purpose; Fort Monroe Authority created; successor in interest to Fort Monroe Federal Area Development Authority
A. This article shall be known and may be cited as the Fort Monroe Authority Act.

B. The General Assembly finds and declares that:

1. Fort Monroe, located on a barrier spit at Hampton Roads Harbor and the southern end of Chesapeake Bay where the Old Point Comfort lighthouse has been welcoming ships since 1802, is one of the Commonwealth's most important cultural treasures. Strategically located near Virginia's Historic Triangle of Williamsburg, Yorktown, and Jamestown, the 565-acre site has been designated a National Historic Landmark District;

2. As a result of decisions made by the federal Defense Base Closure and Realignment Commission (known as the BRAC Commission), Fort Monroe will cease to be an army base in 2011, and at that time most of the site will revert to the Commonwealth;

3. The planning phase of Fort Monroe's transition from use as a United States Army base was managed by the Fort Monroe Federal Area Development Authority (FMFADA), originally established by the City of Hampton pursuant to legislation enacted by the General Assembly in 2007. The Fort Monroe Federal Area Development Authority, a partnership between the City and the Commonwealth, has fulfilled its primary purpose of formulating a reuse plan for Fort Monroe;

4. It is the policy of the Commonwealth to protect the historic resources at Fort Monroe, provide public access to the Fort's historic resources and recreational opportunities, exercise exemplary stewardship of the Fort's natural resources, and maintain Fort Monroe in perpetuity as a place that is a desirable one in which to reside, do business, and visit, all in a way that is economically sustainable;

5. Fort Monroe's status is unique. Municipal services will need to be provided to Fort Monroe's visitors, residents, and businesses. Both the Commonwealth and the FMFADA are signatories to a Programmatic Agreement under Section 106 of the National Historic Preservation Act that requires several specific actions be taken, including the enforcement of design standards to be adopted by the FMFADA or its successor to govern any new development or building restoration or renovation at Fort Monroe. There exists a need for an entity that can manage the property for

the Commonwealth and ensure adherence to the findings, declarations, and policies set forth in this section; and

6. The creation of an authority for this purpose is in the public interest, serves a public purpose, and will promote the health, safety, welfare, convenience, and prosperity of the people of the Commonwealth.

C. The Fort Monroe Authority is created, with the duties and powers set forth in this article, as a public body corporate and as a political subdivision of the Commonwealth. The Authority is constituted as a public instrumentality exercising public functions, and the exercise by the Authority of the duties and powers conferred by this article shall be deemed and held to be the performance of an essential governmental function of the Commonwealth. The exercise of the powers granted by this article and its public purpose shall be in all respects for the benefit of the inhabitants of the Commonwealth.

D. The Fort Monroe Authority is the successor in interest to that political subdivision formerly known as the Fort Monroe Federal Area Development Authority. As such, the Authority stands in the place and stead of, and assumes all rights and duties formerly of, the Fort Monroe Federal Area Development Authority, including but not limited to all leases, contracts, grants-in-aid, and all other agreements of whatsoever nature; holds title to all realty and personalty formerly held by the Fort Monroe Federal Area Development Authority; and may exercise all powers that might at any time past have been exercised by the Fort Monroe Federal Area Development Authority, including the powers and authorities of a Local Redevelopment Authority under the provisions of any and all applicable federal laws, including the Defense Base Closure and Realignment Act of 2005.

E. The Fort Monroe Authority shall be subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and the Board shall adopt procedures consistent with that Act to govern its procurement processes.

F. Employees of the Fort Monroe Authority shall be eligible for membership in the Virginia Retirement System and all of the health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law.

2011, c. 716.

§ 2.2-2337. Definitions

As used in this article, unless the context requires a different meaning:

"Area of Operation" means an area coextensive with the territorial boundaries of the land acquired or to be acquired from the federal government by the Authority or the Commonwealth.

"Authority" means the Fort Monroe Authority.

"Board" means the Board of Trustees created in § 2.2-2338.

"Bonds" means any bonds, notes, interim certificates, debentures, or other obligations issued by the Authority pursuant to this article.

"City of Hampton" or "City" means the City of Hampton, Virginia, a municipal corporation of the Commonwealth of Virginia.

"Design Standards" means the standards developed as a requirement of the Programmatic Agreement and referred to in that document as the "Historic Preservation Manual and Design Standards" which govern the restoration, rehabilitation, and renovation of the contributing elements to the Fort Monroe National Historic Landmark District and new construction, additions, and reconstruction of buildings so they are compatible with the overall character of the District, as they may be adopted or amended from time to time.

"Facility" means a particular building or structure or particular buildings or structures, including all equipment, appurtenances, and accessories necessary or appropriate for the operation of such facility.

"Fort Monroe Master Plan" or "Master Plan" means the plan that identifies the long-term vision for the reuse of the Area of Operation, key implementation projects, and a detailed implementation strategy for attracting new uses and investment to the Area of Operation as approved by the Authority and produced in accordance with the public participation plan as adopted by the Authority.

"Fort Monroe Reuse Plan" or "Reuse Plan" means the document created by the Fort Monroe Federal Area Development Authority and adopted as an official operating document on August 20, 2008, as it may be amended from time to time.

"Programmatic Agreement for the Closure and Disposal of Fort Monroe, Va." or "Programmatic Agreement" means that certain agreement, as it may be amended from time to time, entered into among the U.S. Army, the Virginia State Historic Preservation Officer, the Advisory Council on Historic Preservation, the Commonwealth of Virginia, the Fort Monroe Federal Area Development Authority and the National Park Service and signed by all Signatory Parties as of April 27, 2009, pursuant to § 106 of the National Historic Preservation Act.

"Project" means any specific enterprise undertaken by the Authority, including the facilities as defined in this article, and all other property, real or personal, or any interest therein, necessary or appropriate for the operation of such property.

"Real property" means all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, and right, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage, or otherwise and the indebtedness secured by such liens.

"State Memorandum of Understanding" means an agreement between the Authority, the Secretary of Administration, the State Historic Preservation Officer, and the Governor, on behalf of all state

agencies, to protect Fort Monroe and its historic, cultural, and natural assets by carefully implementing the plans, stipulations, requirements, and obligations under the Programmatic Agreement for nonfederal lands following the transfer of properties from the United States Army to the Commonwealth.

"Trustees" means the members of the Board of Trustees of the Authority.

2011, c. 716; 2012, cc. 436, 482; 2014, cc. 676, 681.

§ 2.2-2338. Board of Trustees; membership

There is hereby created a political subdivision and public body corporate and politic of the Commonwealth of Virginia to be known as the Fort Monroe Authority, to be governed by a Board of Trustees (Board) consisting of 12 voting members appointed as follows: the Secretary of Natural Resources and the Secretary of Commerce and Trade, or their successor positions if those positions no longer exist, from the Governor's cabinet; the Lieutenant Governor; the member of the Senate of Virginia and the member of the House of Delegates representing the district in which Fort Monroe lies; two members appointed by the Hampton City Council; and five nonlegislative citizen members appointed by the Governor, four of whom shall have expertise relevant to the implementation of the Fort Monroe Reuse Plan, including but not limited to the fields of historic preservation, tourism, environment, real estate, finance, and education, and one of whom shall be a citizen representative from the Hampton Roads region. Cabinet members, the Lieutenant Governor, and elected representatives shall serve terms commensurate with their terms of office. Citizen appointees shall initially be appointed for staggered terms of either one, two, or three years, and thereafter shall serve for four-year terms. Cabinet members shall be entitled to send their deputies or another cabinet member, and legislative members another legislator, to meetings as full voting members in the event that official duties require their presence elsewhere.

The Board so appointed shall enter upon the performance of its duties and shall initially and annually thereafter elect one of its members as chairman and another as vice-chairman. The Board shall also elect annually a secretary, who shall be a member of the Board, and a treasurer, who need not be a member of the Board, or a secretary-treasurer, who need not be a member of the Board. The chairman, or in his absence the vice-chairman, shall preside at all meetings of the Board, and in the absence of both the chairman and vice-chairman, the Board shall elect a chairman pro tempore who shall preside at such meetings. Seven Trustees shall constitute a quorum, and all action by the Board shall require the affirmative vote of a majority of the Trustees present and voting, except that any action to amend or terminate the existing Reuse Plan, or to adopt a new Reuse Plan, shall require the affirmative vote of 75 percent or more of the Trustees present and voting. The members of the Board shall be entitled to reimbursement for expenses incurred in attendance upon meetings of the Board or while otherwise engaged in the discharge of their duties. Such expenses shall be paid out of the treasury of the Authority in such manner as shall be prescribed by the Authority.

2011, cc. 716, 780, 858; 2014, cc. 115, 490, 676, 681.

§ 2.2-2339. Duties of the Authority

The Authority shall have the power and duty:

1. To do all things necessary and proper to further an appreciation of the contributions of the first permanent English-speaking settlers as well as the Virginia Indians to the building of our Commonwealth and nation, to commemorate the establishment of the first coastal fortification in the English-speaking New World, to commemorate the lives of prominent Virginians who were connected to the largest moated fortification in the United States, to commemorate the important role of African Americans in the history of the site, including the "Contraband" slave decision in 1861 that earned Fort Monroe the designation as "Freedom's Fortress," to commemorate Old Point Comfort's role in establishing international trade and British maritime law in Virginia, and to commemorate almost 250 years of continuous service as a coastal defense fortification of the United States of America;

2. To hire and develop a professional staff including an executive director and such other staff as is necessary to discharge the responsibilities of the Authority;

3. To establish personnel policies and benefits for staff;

4. To oversee the preservation, conservation, protection, and maintenance of the Commonwealth's natural resources and real property interests at Fort Monroe and the renewal of Fort Monroe as a vibrant and thriving community;

5. To adopt an annual budget, which shall be submitted to the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations and the Department of Planning and Budget by July 1 of each year;

6. To provide for additional, more complete, or more timely services than are generally available in the City of Hampton as a whole; and

7. To serve as the Commonwealth's management agent for all the land in the Area of Operation and for the implementation of actions and fulfillment of federal and state obligations for public and private land under the Fort Monroe Master Plan, Programmatic Agreement, Design Standards, Reuse Plan, State Memorandum of Understanding, and any other agreements regarding Fort Monroe to which the Commonwealth is a party, ensuring adherence to the findings, declarations, and policies set forth in this article, unless the Commonwealth and the Authority specifically agree in writing to the contrary.

2011, c. 716; 2012, cc. 436, 482; 2014, cc. 676, 681.

§ 2.2-2339.1. Fort Monroe Master Plan; approval by Governor

The Fort Monroe Master Plan shall be consistent with all preservation commitments and obligations agreed to by the Commonwealth. The Master Plan shall be approved by the Governor before it becomes effective.

2012, cc. 436, 482.

§ 2.2-2340. Additional declaration of policy; powers of the Authority; penalty

A. It is the policy of the Commonwealth that the historic, cultural, and natural resources of Fort Monroe be protected in any conveyance or alienation of real property interests by the Authority. Real property in the Area of Operation at Fort Monroe may be maintained as Commonwealth-owned land that is leased, whether by short-term operating/revenue lease or long-term ground lease, to appropriate public, private, or joint venture entities, with such historic, cultural, and natural resources being protected in any such lease, to be approved as to form by the Attorney General of the Commonwealth of Virginia. If sold as provided in this article, real property interests in the Area of Operation at Fort Monroe may only be sold under covenants, historic conservation easements, historic preservation easements, or other appropriate legal restrictions approved as to form by the Attorney General that protect these historic and natural resources. Properties in the Wherry Quarter and Inner Fort areas identified in the Fort Monroe Reuse Plan may only be sold with the consent of both the Governor and the General Assembly, except that any transfer to the National Park Service shall require only the approval of the Governor. The proceeds from the sale or pre-paid lease of any real or personal property within the Area of Operation shall be retained by the Authority and used for infrastructure improvements in the Area of Operation.

B. The Authority shall have the power and duty:

1. To sue and be sued; to adopt and use a common seal and to alter the same as may be deemed expedient; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the Authority; and to make and from time to time amend and repeal bylaws, rules, and regulations, not inconsistent with law, to carry into effect the powers and purposes of the Authority;

2. To foster and stimulate the economic and other development of Fort Monroe, including without limitation development for business, employment, housing, commercial, recreational, educational, and other public purposes; to prepare and carry out plans and projects to accomplish such objectives; to provide for the construction, reconstruction, rehabilitation, reuse, improvement, alteration, maintenance, removal, equipping, or repair of any buildings, structures, or land of any kind; to lease or rent to others or to develop, operate, or manage with others in a joint venture or other partnering arrangement, on such terms as it deems proper and which are consistent with the provisions of the Programmatic Agreement, Design Standards, and Reuse Plan governing any lands, dwellings, houses, accommodations, structures, buildings, facilities, or appurtenances embraced within Fort Monroe; to establish, collect, and revise the rents charged and terms and conditions of occupancy thereof; to terminate any such lease or rental obligation upon the failure of the lessee or renter to comply with any of the obligations thereof; to arrange or contract for the furnishing by any person or agency, public or private, of works, services, privileges, or facilities in connection with any activity in which the Authority may engage, provided, however, that if services are provided by the City of Hampton pursuant to § 2.2-2341 for which the City is compensated pursuant to subsection B of § 2.2-2342, then the Authority may provide for additional,

more complete, or more timely services than are generally available in the City of Hampton as a whole if deemed necessary or appropriate by the Authority; to acquire, own, hold, and improve real or personal property; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, easement, dedication, or otherwise any real or personal property or any interest therein, which purchase, lease, or acquisition may only be made for less than fair market value if the Board of Trustees determines, upon the advice of the Attorney General, that the transaction is consistent with the fiduciary obligation of the Authority to the Commonwealth and if necessary or appropriate to further the purposes of the Authority; as provided in this article, to sell, lease, exchange, transfer, assign, or pledge any real or personal property or any interest therein, which sale, lease, or other transfer or assignment may be made for less than fair market value; as provided in this article, to dedicate, make a gift of, or lease for a nominal amount any real or personal property or any interest therein to the Commonwealth, the City of Hampton, or other localities or agencies, public or private, within the Area of Operation or adjacent thereto, jointly or severally, for public use or benefit, such as, but not limited to, game preserves, playgrounds, park and recreational areas and facilities, hospitals, clinics, schools, and airports; to acquire, lease, maintain, alter, operate, improve, expand, sell, or otherwise dispose of onsite utility and infrastructure systems or sell any excess service capacity for offsite use; to acquire, lease, construct, maintain, and operate and dispose of tracks, spurs, crossings, terminals, warehouses, and terminal facilities of every kind and description necessary or useful in the transportation and storage of goods, wares, and merchandise; and to insure or provide for the insurance of any real or personal property or operation of the Authority against any risks or hazards;

3. To invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursements, in property or security in which fiduciaries may legally invest funds subject to their control; to purchase its bonds at a price not more than the principal amount thereof and accrued interest, all bonds so purchased to be cancelled;

4. To undertake and carry out examinations, investigations, studies, and analyses of the business, industrial, agricultural, utility, transportation, and other economic development needs, requirements, and potentialities of its Area of Operation or offsite needs, requirements, and potentialities that directly affect the success of the Authority at Fort Monroe, and the manner in which such needs and requirements and potentialities are being met, or should be met, in order to accomplish the purposes for which it is created; to make use of the facts determined in such research and analyses in its own operation; and to make the results of such studies and analyses available to public bodies and to private individuals, groups, and businesses, except as such information may be exempted pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.);

5. To administer, develop, and maintain at Fort Monroe permanent commemorative cultural and historical museums and memorials;

6. To adopt names, flags, seals, and other emblems for use in connection with such shrines and to copyright the same in the name of the Commonwealth;

7. To enter into any contracts not otherwise specifically authorized in this article to further the purposes of the Authority, after approval as to form by the Attorney General;

8. To establish nonprofit corporations as instrumentalities to assist in administering the affairs of the Authority;

9. To exercise the power of eminent domain in the manner provided by Chapter 3 (§ 25.1-300 et seq.) of Title 25.1 within the Authority's Area of Operation; however, eminent domain may only be used to obtain easements across property on Fort Monroe for the provision of water, sewer, electrical, ingress and egress, and other necessary or useful services to further the purposes of the Authority, unless the Governor has expressly granted authority to obtain interests for other purposes;

10. To fix, charge, and collect rents, fees, and charges for the use of, or the benefit derived from, the services or facilities provided, owned, operated, or financed by the Authority benefiting property within the Authority's Area of Operation. Such rents, fees, and charges may be charged to and collected by such persons and in such manner as the Authority may determine from (i) any person contracting for the services or using the Authority facilities or (ii) the owners, tenants, or customers of the real estate and improvements that are served by, or benefit from the use of, any such services or facilities, in such manner as shall be authorized by the Authority in connection with the provision of such services or facilities. Such rents, fees, and charges shall not be chargeable to the Commonwealth or, where such rents, fees or charges relate to services or facilities utilized by the City of Hampton to provide municipal services, to the City of Hampton except as may be provided by lease or other agreement and may be used to fund the provision of the additional, more complete, or more timely services authorized under subdivision 6 of § 2.2-2339, the payments provided under § 2.2-2342, or for other purposes as the Authority may determine to be appropriate, subject to the provisions of subsection B of § 2.2-2342;

11. To receive and expend gifts, grants, and donations from whatever source derived for the purposes of the Authority;

12. To employ an executive director and such deputies and assistants as may be required;

13. To elect any past chairman of the Board of Trustees to the honorary position of chairman emeritus. Chairmen emeriti shall serve as honorary members for life. Chairmen emeriti shall be elected in addition to the nonlegislative citizen member positions defined in § 2.2-2338;

14. To determine what paintings, statuary, works of art, manuscripts, and artifacts may be acquired by purchase, gift, or loan and to exchange or sell the same if not inconsistent with the terms of such purchase, gift, loan, or other acquisition;

15. To change the form of investment of any funds, securities, or other property, real or personal, provided the same are not inconsistent with the terms of the instrument under which the same were acquired, and to sell, grant, or convey any such property, subject to the provisions of subsection A of § 2.2-2340;

16. To cooperate with the federal government, the Commonwealth, the City of Hampton, or other nearby localities in the discharge of its enumerated powers;

17. To exercise all or any part or combination of powers granted in this article;

18. To do any and all other acts and things that may be reasonably necessary and convenient to carry out its purposes and powers;

19. To adopt, amend or repeal, by the Board of Trustees, or the executive committee thereof, regulations concerning the use of, access to and visitation of properties under the control of the Authority in order to protect or secure such properties and the public enjoyment thereof, with any violation of such regulations being punishable by a civil penalty of up to $100 for the first violation and up to $250 for any subsequent violation, such civil penalty to be paid to the Authority;

20. To provide parking and traffic rules and regulations on property owned by the Authority; and

21. To provide that any person who knowingly violates a regulation of the Authority may be requested by an agent or employee of the Authority to leave the property and upon the failure of such person so to do shall be guilty of a trespass as provided in § 18.2-119.

2011, c. 716; 2012, cc. 436, 482; 2014, cc. 676, 681.

§ 2.2-2341. Relationship to the City of Hampton

A. All of Fort Monroe is within the City of Hampton's jurisdictional limits; therefore, the City of Hampton is the locality and Virginia municipal corporation for the Authority's Area of Operation. Nothing in this article is intended to limit or restrict the otherwise existing authority of the City of Hampton which, except as otherwise provided in this article, is reserved solely for the City of Hampton. As authorized in this article, the Authority may supplement in its Area of Operation the works, services, privileges, or facilities provided by the City of Hampton to provide additional, more complete, or more timely works, services, privileges, or facilities than provided by the City of Hampton.

B. The Authority shall adopt procedures for the implementation of required actions under the Programmatic Agreement and any other agreements regarding Fort Monroe to which the Commonwealth is a party, including adherence to the Reuse Plan and the Design Standards adopted by the Authority. Those procedures shall provide the City of Hampton a reasonable opportunity for review and comment regarding any proposed actions.

C. The City shall be responsible for dealing directly with any taxpayers at Fort Monroe regarding the collection of any taxes or fees which the City believes are due based on real property interests,

business activity, ownership of personal property, and other authorized taxes and fees, unless the City and the Authority agree differently in writing.

D. In its comprehensive plan and in adopting a zoning ordinance for the Area of Operation, the City shall recognize the authority of the federal and state obligations for land use regulation placed upon the Fort Monroe Authority by the requirements of the Fort Monroe Master Plan, Programmatic Agreement, Design Standards, Reuse Plan, State Memorandum of Understanding, and any other agreements regarding Fort Monroe to which the Commonwealth is a party.

2011, c. 716; 2014, cc. 676, 681.

§ 2.2-2341.1. Control over the use of certain vehicles

Notwithstanding the provisions of § 46.2-916.3, the Authority shall be solely responsible for regulating the operation of golf carts and utility vehicles within the Area of Operation. Regulations of the Authority shall provide that golf carts and utility vehicles may only be used by Authority staff and contractors engaged by the Authority while such staff and contractors are conducting the official business of the Authority.

2012, cc. 436, 482.

§ 2.2-2342. Payments to Commonwealth or political subdivisions thereof; payments to the City of Hampton

A. The Authority may agree to make such payments to the Commonwealth or any political subdivision thereof, which payments such bodies are hereby authorized to accept, for any goods, services, licenses, concessions or franchises as the Authority finds consistent with the purposes for which the Authority has been created.

B. On or before January 15, 2012, the Authority shall pay to the City of Hampton a fee in an amount to be determined by the formula defined below for the period September 15, 2011, through December 31, 2011. Thereafter, fees to the City of Hampton shall be payable, in arrears, for the period January 1 through June 30 on each June 30, and for the period July 1 through December 31 on each December 31. The fee shall be determined as follows: (i) all property in the Fort Monroe Area of Operation shall be assessed as if it was privately owned property; (ii) property exempt from taxation by classification under § 58.1-3606, other than property classified solely under subdivision A 1 of § 58.1-3606, based on the use of the property and regardless of ownership of the property, shall be excluded from the calculation of the fee; (iii) property designated by ordinance of the City of Hampton as exempt from taxation pursuant to § 58.1-3651, or pursuant to any other applicable action of the City Council, based on the use of the property and regardless of ownership of the property, shall be excluded from the calculation of the fee; (iv) property owned or leased and exclusively used by the National Park Service or the City of Hampton, property remaining under the ownership of the federal government, and any other property that would not be taxed if it was located elsewhere in the City of Hampton by virtue of the ownership, control, or use of the property, except as otherwise provided herein, shall be excluded from the

calculation of the fee; and (v) the total assessed value of the property, less any exclusions as indicated herein, shall then be divided by $100, multiplied by the then-current real estate tax rate set by the City of Hampton, minus the real estate taxes owed to the City of Hampton from taxpayers within the Authority's Area of Operation. This shall be the amount of the fee payable to the City of Hampton. It is the intent of this section that for properties at Fort Monroe that would be taxed by the City of Hampton if privately held, the Authority shall pay a fee in lieu of taxes, but that properties at Fort Monroe that would not be taxed by the City if privately held shall be exempt from the fee, taking into account the current limitations on the transfer of properties at Fort Monroe. The Authority or its qualifying lessees shall apply to the assessor of real estate for the City of Hampton and follow the process for recognition of the exemption applicable to other such properties in the City. The Authority shall use all funds available and manage its finances and take all necessary and prudent actions to ensure that the fee provided in subsection B is paid when due and shall notify the City of Hampton and the Trustees as soon as practical if the funds will not be available to pay the fee when due and the Trustees shall take all necessary actions to remedy any deficiency. In the event the fee is not paid when due, interest thereon shall at that time accrue at the rate, not to exceed the maximum amount allowed by § 2.2-4355, determined by the City of Hampton until such time as the overdue payment and interest are paid. Unpaid fees and interest thereon shall rank in parity with liens for unpaid taxes and may be collected by the City of Hampton as taxes are collected; however, no real property of the Commonwealth or the Authority may be sold in such collection efforts.

C. The Authority shall have the right to contest the assessments made on property at Fort Monroe owned by the Commonwealth or itself or any property for which the Commonwealth or the Authority shall be responsible for payment of the fee, using the procedures utilized by other citizens of the City of Hampton, including appeals to the Board of Review of Real Estate Assessments for the City of Hampton and appeals therefrom to the Circuit Court of the City of Hampton, which is hereby granted jurisdiction to adjudicate any such appeal by the Authority in the same manner as applicable to private property owners or lessees in the city.

2011, c. 716; 2013, c. 221.

§ 2.2-2343. Authority may borrow money, accept contributions, etc

In addition to the powers conferred upon the Authority by other provisions of this article, the Authority shall have the power:

1. To borrow moneys or accept contributions, grants, or other financial assistance from the federal government, the Commonwealth, any locality or political subdivision, any agency or instrumentality thereof, including but not limited to the Virginia Resources Authority, or any source, public or private, for or in aid of any project of the Authority, and to these ends, to comply with such conditions and enter into such mortgages, trust indentures, leases, or agreements as may be necessary, convenient, or desirable;

2. To apply for grants from the Urban Public-Private Partnership Redevelopment Fund pursuant to Chapter 24.1 (§ 15.2-2414 et seq.) of Title 15.2. The Authority shall be considered a local government eligible for grants under that chapter. Funds from any source available to the Authority may be used to meet the matching requirement of any such grant;

3. To participate in local group pools authorized pursuant to § 15.2-2703 or to participate in the Commonwealth's risk pool administered by the Division of Risk Management;

4. To utilize the provisions of the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) and the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) as a qualifying public entity under those statutes;

5. To apply for and receive enterprise zone designation under the Enterprise Zone Grant Act (§ 59.1-538 et seq.). Fort Monroe shall be considered an eligible area for such designation, although the Governor is not obligated to grant such a designation;

6. To act as a local cooperating entity pursuant to § 62.1-148; and

7. To enter into agreements with any public or private utility for the ownership or operation of utility services at Fort Monroe, as provided in § 2.2-2348.1. The Authority and the City may mutually agree that such services should not or need not be included under any franchise agreement that the City has with that utility. The utility shall provide the same service generally available to its other customers in the City at reasonable rates.

2011, c. 716; 2014, cc. 676, 681.

§ 2.2-2344. Authority empowered to issue bonds; additional security; liability thereon

The Authority shall have power to issue bonds from time to time in its discretion for any of its corporate purposes, including the issuance of refunding bonds for the payment or retirement of bonds previously issued by it. The Authority may issue such type of bonds as it may determine, including but not limited to:

1. Bonds on which the principal and interest are payable:

a. Exclusively from the income and revenues of the project or facility financed with the proceeds of such bonds;

b. Exclusively from the income and revenues of certain designated projects or facilities whether or not they are financed in whole or in part with the proceeds of such bonds; or

c. From its revenues generally; and

2. Bonds on which the principal and interest are payable solely from contributions or grants received from the federal government, the Commonwealth, or any other source, public or private.

Any such bonds may be additionally secured by a pledge of any grants or contributions from the federal government, the Commonwealth, any political subdivision of the Commonwealth, or other

source, or a pledge of any income or revenues of the Authority, or a mortgage of any particular projects or facilities or other property of the Authority.

Neither the Trustees of the Authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof. The bonds and other obligations of the Authority, and such bonds and obligations shall so state on their face, shall not be a debt of the Commonwealth or any political subdivision thereof other than the issuing Authority, and neither the Commonwealth nor any political subdivision thereof other than the issuing Authority shall be liable thereon, nor shall such bonds or obligations be payable out of any funds or properties other than those of the Authority. The bonds shall not constitute indebtedness within the meaning of any debt limitation or restriction. Bonds of the Authority are declared to be issued for an essential public and governmental purpose.

2011, c. 716.

§ 2.2-2345. Powers and duties of executive director

The executive director shall exercise such powers and duties relating to the Authority conferred upon the Board as may be delegated to him by the Board, including powers and duties involving the exercise of discretion. The executive director shall also exercise and perform such other powers and duties as may be lawfully delegated to him and such powers and duties as may be conferred or imposed upon him by law.

2011, c. 716.

§ 2.2-2346. Legal services

For such legal services as it may require, the Authority may employ its own counsel and legal staff or make use of legal services made available to it by any public body, or both; however, the Authority shall be required to use any legal services provided by the Office of the Attorney General, if such services are made available, since the property at Fort Monroe is an asset of the Commonwealth.

2011, c. 716.

§ 2.2-2347. Exemption from taxation

The bonds or other securities issued by the Authority, the interest thereon, and all real and personal property and any interest therein of the Authority, and all income derived therefrom by the Authority shall at all times be free from taxation by the Commonwealth, or by any political subdivision thereof.

2011, c. 716.

§ 2.2-2348. Rents, fees, and charges; disposition of revenues

The rents, fees, and charges established by the Authority for the use of its property, projects, and facilities and for any other service furnished or provided by the Authority shall be fixed so that they, together with other revenues of the Authority, shall provide at least sufficient funds to pay

the cost of maintaining, repairing, and operating the Authority; its property, projects, and facilities; and the principal and interest of any bonds issued by the Authority or other debts contracted as the same shall become due and payable. A reserve may be accumulated and maintained out of the revenues of the Authority for extraordinary repairs and expenses and for such other purposes as may be provided in any resolution authorizing a bond issue or in any trust indenture securing such bonds. Subject to such provisions and restrictions as may be set forth in the resolution or in the trust indenture authorizing or securing any of the bonds or other obligations issued hereunder, the Authority shall have exclusive control of the revenue derived from the operation of the Authority and the right to use such revenues in the exercise of its powers and duties set forth in this article. No person, firm, association, or corporation shall receive any profit or dividend from the revenues, earnings, or other funds or assets of such authority other than for debts contracted, for services rendered, for materials and supplies furnished, and for other value actually received by the Authority.

The accounts of the Authority shall be audited annually by the Auditor of Public Accounts, or his legally authorized representative, and the cost of such audit shall be borne by the Authority. Copies of the annual audit shall be distributed to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

2011, c. 716.

§ 2.2-2348.1. Ratification of the ownership of certain lands in the City of Hampton known as Fort Monroe; ownership and operation of utilities

A. Notwithstanding any other provision of law, the ownership of certain property located in the City of Hampton, Virginia, consisting of 312.75 acres, more or less, generally known as "Fort Monroe," shall be deemed validly vested in the Commonwealth, with all rights, title, and interest therein, being more particularly described as follows: All that certain lot, piece, or parcel of land situate, lying, and being in the City of Hampton, in the Commonwealth of Virginia, containing 312.75 acres, more or less, described in Exhibit A and illustrated in Exhibit B of that certain Quitclaim Deed recorded in the Clerk's Office of the Circuit Court of the City of Hampton on June 14, 2013, as Instrument No. 130009559.

B. Notwithstanding any other provision of law, the ownership of the roads, water, sewer, and other utility services on that certain property located in the City of Hampton, Virginia, consisting of 561.345 acres, more or less, generally known as "Fort Monroe," shall be deemed validly vested in the Commonwealth, being more particularly described as follows: All those certain lots, pieces, or parcels of land situate, lying, and being in the City of Hampton, in the Commonwealth of Virginia, containing 561.345 acres, more or less, described as Parcels A, B, C, D, E, F, G, and H on that certain survey by the Norfolk District Corps of Engineers dated July 20, 2009, last revised November 15, 2012, entitled "Plat Showing 8 Parcels of Land Totaling +/-561.345 Acres Situated on Fort Monroe, Virginia," and recorded in the Clerk's Office of the Circuit Court of the City of Hampton in Instrument No. 130009559 at Pages 286 and 287.

1. The Authority shall maintain such roads as public rights-of-way to ensure lawful access to the properties within said acreage; however, the Commonwealth may convey its right, title, and interests in such roads to the City of Hampton or the Virginia Department of Transportation, and thereby transfer the obligation to maintain such roads.

2. The Authority shall maintain and operate such water, sewer, and other utility services to ensure that the properties within said acreage have access to such utility services; however, the Commonwealth may convey its right, title, and interest in any such utility owned by the Commonwealth to a public or private entity and thereafter transfer the obligation to maintain and operate such utilities.

2014, cc. 676, 681.

§ 2.2-2349. Powers conferred additional and supplemental; liberal construction

The powers conferred by this article shall be in addition and supplemental to the powers conferred by any other law. This article shall be liberally construed to effect the purposes hereof.

2011, c. 716; 2015, c. 709.

§ 2.2-2349.1. Chapter controlling over inconsistent laws

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, general, special, or local, or parts thereof, the provisions of this chapter shall be controlling.

2012, cc. 436, 482.

§ 2.2-2350. Sovereign immunity

No provisions of this article nor any act of the Authority, including the procurement of insurance or self-insurance, shall be deemed a waiver of any sovereign immunity to which the Authority or its directors, officers, employees, or agents are otherwise entitled.

2011, c. 716.

Chapter 24 - BOARDS

Article 1 - ART AND ARCHITECTURAL REVIEW BOARD

§ 2.2-2400. Art and Architectural Review Board; members and officers; travel expenses; quorum; compensation; staff; report

A. The Art and Architectural Review Board (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The Board shall consist of six members as follows: the Director of the Department of Historic Resources, or his designee, serving as an ex officio member and five citizen members, appointed by the Governor. Of the citizen members, one shall be an architect who may be appointed from a list of two or more architects nominated by the governing board of the Virginia Society of the American Institute of Architects; one may be appointed from a list of two or more persons nominated by the governing board of the University of Virginia; one shall be a member of the board of trustees of the Virginia

Museum of Fine Arts; and two shall be appointed from the Commonwealth at large, one of whom shall be a painter or sculptor. Lists of nominees shall be submitted at least 60 days before the expiration of the member's term for which the nominations are being made in order to be considered by the Governor in making appointments pursuant to this section.

B. Beginning July 1, 2011, the Governor's appointments of the five citizen members shall be staggered as follows: two members for a term of one year, two members for a term of two years, and one member for a term of three years. Thereafter, members of the Board shall be appointed for terms of four years each, except appointments to fill vacancies, which shall be for the unexpired terms. No member shall serve for more than two consecutive four-year terms, except that any member appointed to the unexpired term of another shall be eligible to serve two consecutive four-year terms. Vacancies shall be filled in the manner of the original appointments. The Director of the Department of Historic Resources shall serve a term coincident with his term of office.

C. Annually, the Board shall elect a chairman and vice-chairman and may elect such other officers as the Board deems proper from among its membership. A majority of the members of the Board shall constitute a quorum.

D. The members of the Board shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825.

E. The Division of Engineering and Buildings of the Department of General Services shall provide assistance to the Board in the undertaking of its responsibilities.

F. The Board shall submit a biennial report to the Governor and General Assembly on or before October 1 of each even-numbered year.

Code 1919, § 581; 1922, p. 757; 1927, p. 106; 1932, p. 37; 1938, p. 724; Michie Code 1942, § 585 (64); R.P. 1948, § 9-7; 1964, c. 234; 1975, c. 510; 1976, c. 484; 1978, c. 580, §§ 2.1-488.1, 2.1-488.6; 1979, c. 66; 1981, c. 221; 1984, c. 734, § 2.1-488.2:1; 1985, c. 448; 1989, c. 656; 2001, c. 844; 2004, c. 650; 2011, cc. 691, 714.

§ 2.2-2401. Works of art accepted by Governor; approval by Board; meaning of "work of art."

A. The Governor may accept, in the name of the Commonwealth, gifts to the Commonwealth of works of art as defined in subsection B. But no work of art shall be so accepted until submitted to the Board or otherwise brought to its attention for its advice and counsel to the Governor.

B. As used in this article, "work of art" means all paintings, mural decorations, stained glass, statues, bas-reliefs, tablets, sculptures, monuments, fountains, arches or other structure of a permanent character intended for ornament or commemoration.

Code 1919, § 583; 1920, p. 51; Michie Code 1942, § 582a; R. P. 1948, §§ 9-10, 9-12; 1975, c. 514; 1978, c. 580, §§ 2.1-488.3, 2.1-488.5; 2001, c. 844.

§ 2.2-2402. Governor's approval of works of art; removal, etc.; structures, fixtures and works of art placed on or extending over state property

A. No work of art shall become the property of the Commonwealth by purchase, gift or otherwise, unless the work of art or a design thereof, together with its proposed location, have been submitted to and approved by the Governor acting with the advice and counsel of the Board. Nor shall any work of art, until so submitted and approved, be contracted for, placed in or upon or allowed to extend over any property belonging to the Commonwealth. No existing work of art owned by the Commonwealth shall be removed, relocated or altered in any way without submission to the Governor.

This subsection shall not apply to any portrait, tablet or work of art portraying, or pertaining to, a present or former Governor and presented to, or acquired, by the Governor and displayed in that part of the building under the direct supervision of the Governor or a present or former presiding officer of the Senate or a member or former member of the Supreme Court, the Senate, or the House of Delegates, presented to, or acquired by, the member's or presiding officer's respective body and displayed in that part of any building under the direct supervision and jurisdiction of such body nor shall they apply to any portrait, tablet or work of art acquired by the Virginia Museum of Fine Arts or museums operated in conjunction with art or architectural departments at public colleges or universities in Virginia.

B. No construction or erection of any building or any appurtenant structure of any nature, which is to be placed on or allowed to extend over any property belonging to the Commonwealth, and no construction or erection of any bridge, arch, gate, fence, or other structure or fixture intended primarily for ornamental or memorial purposes, and which is to be paid for, either wholly or in part by appropriation from the state treasury, and, which is to be placed on or allowed to extend over any property belonging to the Commonwealth, shall be begun, unless the design and proposed location thereof have been submitted to the Governor and its artistic character approved in writing by him acting with the advice and counsel of the Board, unless the Governor has failed to disapprove in writing the design within thirty days after its submission. No existing structure of the kinds described in this subsection, owned by the Commonwealth, shall be removed, remodeled or added to, nor shall any appurtenant structure be attached without submission to the Governor and the artistic character of the proposed new structure approved in writing by him acting with the advice and counsel of the Board, unless the Governor has failed to disapprove in writing the design within thirty days after its submission.

C. No work of art not owned by the Commonwealth shall be placed in or upon or allowed to extend over any property belonging to the Commonwealth for a period of more than two years unless such work of art or a design thereof has been submitted to and approved by the Governor acting with the advice and counsel of the Board.

This subsection shall not apply to the Virginia Museum of Fine Arts or museums operated in conjunction with art or architectural departments at public colleges and universities in Virginia.

Code 1919, § 582; 1920, p. 393; 1942, p. 197; R. P. 1948, § 9-11; 1956, c. 223; 1970, c. 203; 1975, c. 514; 1978, c. 580, § 2.1-488.4; 2000, c. 551; 2001, c. 844.

Article 2 - CHIEF INFORMATION OFFICER ADVISORY BOARD

§ 2.2-2403. Repealed
Repealed by Acts 2003, cc. 981 and 1021.

Article 3 - DESIGN-BUILD/CONSTRUCTION MANAGEMENT REVIEW BOARD

§§ 2.2-2404 through 2.2-2406. Repealed
Repealed by Acts 2011, cc. 594 and 681, cl. 2.

Article 4 - MIGRANT AND SEASONAL FARMWORKERS BOARD

§§ 2.2-2407, 2.2-2408. Repealed
Repealed by Acts 2011, cc. 594 and 681, cl. 2.

Article 5 - PERSONNEL ADVISORY BOARD

§§ 2.2-2409, 2.2-2410. Repealed
Repealed by Acts 2001, cc. 520 and 806.

Article 6 - PUBLIC GUARDIAN AND CONSERVATOR ADVISORY BOARD

§§ 2.2-2411, 2.2-2412. Repealed
Repealed by Acts 2016, c. 40, cl. 2.

Article 7 - SMALL BUSINESS ADVISORY BOARD

§§ 2.2-2413, 2.2-2414. Repealed
Repealed by Acts 2012, cc. 803 and 835, cl. 45.

Article 8 - TREASURY BOARD

§ 2.2-2415. Treasury Board membership; chairman; quorum; reimbursement for expenses
A. The Treasury Board (the Board) is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government. The Board shall consist of seven members to be appointed as follows: four members to be appointed by the Governor, subject to confirmation by the General Assembly, who shall serve at the pleasure of the Governor; the State Treasurer, the Comptroller, and the Tax Commissioner. The members appointed by the Governor should have a background and experience in financial management and investments. The State Treasurer, the Comptroller, and the Tax Commissioner shall serve terms coincident with their terms of office. Vacancies shall be filled in the manner of the original appointment.

B. The State Treasurer shall act as the chairman, and the Board shall elect a secretary who need not be a member of the Board. The Board shall have regularly scheduled meetings at least six

times per year and shall keep a regular and sufficient set of books, which include a record of all of their proceedings and any action taken by them with respect to any funds which by any provision of law are required to be administered by the Treasury Board. Four members of the Board shall constitute a quorum.

C. Members of the Board appointed by the Governor shall receive reimbursement for all reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2813.

Code 1950, § 2-149.1; 1966, c. 677, § 2.1-178; 1979, c. 215; 1984, c. 720; 1987, c. 601; 2001, c. 844; 2016, cc. 36, 72.

§ 2.2-2416. Powers and duties of Treasury Board

The Board shall have the power and duty to:

1. Exercise general supervision over all investments of state funds;

2. Give advice and supervision in the financing of state buildings and to make recommendations, as requested, to the Governor on methods by which capital outlay requirements of the Commonwealth, including its agencies and institutions, may be financed;

3. Control and manage all sinking funds and other funds in possession of the Commonwealth in a fiduciary capacity;

4. Administer the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.);

5. Make recommendations to the Governor, notwithstanding any provisions to the contrary, on proposed bond issues or other financing arrangements; approve the terms and structure of bonds or other financing arrangements executed by or for the benefit of educational institutions and state agencies other than independent state authorities, including bonds or other financing arrangements secured by leases, lease purchase agreements, financing leases, capital leases or other similar agreements; and agreements relating to the sale of bonds;

6. Take or cause to be taken and omit to take all actions, as to any tax exempt bonds for which it has issuing authority, either by statute or by act of the General Assembly, the taking or omission of which is necessary on behalf of the Commonwealth to prevent such bonds from being or becoming subject to federal income taxation or being considered to be "arbitrage bonds" within the meaning of federal tax laws, including compliance with the arbitrage rebate provisions thereof;

7. Approve, notwithstanding any provisions to the contrary, the terms and structure of bonds or other financing arrangements executed by or for the benefit of state agencies, boards and authorities where debt service payments on such bonds or other financing arrangements are expected by such agency, board or authority to be made, in whole or in part, directly or indirectly, from appropriations of the Commonwealth, including bonds or other financing arrangements secured by leases, lease purchase agreements, financing leases, capital leases or other similar agreements, and agreements relating to the sale of bonds;

8. Establish debt structuring guidelines for bonds or other financing arrangements executed by or for the benefit of all state agencies, institutions, boards, and authorities where the debt service payments on such bonds or other financing arrangements are expected to be made, in whole or in part, directly or indirectly, from appropriations of the Commonwealth, in which guidelines the Board may, in its sole discretion, include such items as it deems necessary and appropriate, including, but not limited to, defining terms such as "terms and structure" and "bonds and other financing arrangements" and exempting from its review and approval pursuant to subdivision 5 or 7 (a) specific bond issues and other financing arrangements, (b) certain types or classes of bond issues and other financing arrangements, and (c) bond issues and other financing arrangements that are below a stated dollar amount;

9. Do all acts and things necessary or convenient to efficiently carry out and enforce the powers granted to and duties imposed on it by law, including delegating to the State Treasurer or to a committee composed of not less than three members of the Board such powers and duties, as it deems proper, to the extent designated and permitted by the Board;

10. Exercise such other powers and perform such other duties conferred or imposed upon it by law, including the local government investment pool authorized by Chapter 46 (§ 2.2-4600 et seq.) of this title; and

11. Do all acts and things necessary or convenient to wind up the affairs of, and protect the Commonwealth's interests in such matters that may survive the termination of the State Education Assistance Authority, the Virginia Student Assistance Authorities, and the Virginia Education Loan Authority. Nothing herein shall be construed to amend, enhance or otherwise alter such commitments, security interests, guarantees or other pledges entered into by the State Education Assistance Authority, the Virginia Student Assistance Authorities, and the Virginia Education Loan Authority, acting in their official capacity and effective on or before March 31, 1997.

Code 1950, § 2-149.2; 1966, c. 677, § 2.1-179; 1979, c. 215; 1984, c. 720; 1987, cc. 210, 211, 242; 1988, c. 258; 1990, c. 712; 1991, c. 578; 1996, cc. 636, 656; 1998, cc. 39, 784; 2001, c. 844.

§ 2.2-2417. Approval of financial terms of certain contracts; using agencies to procure certain financial services through Treasury Board

A. The Board, or its designee, shall review and approve the financial terms of all contracts for the purchase or financing of the purchase by agencies, institutions, boards and authorities which receive appropriations from the Commonwealth, i.e., the using agencies, of personal property, including personal property to be affixed to realty, whether by lease-purchase, installment purchase or otherwise, where payment of the purchase price is deferred through installment payments, includes the payment of interest, or is otherwise financed by the seller, lessor, or third parties.

B. The Board may specifically exempt from its review and approval specific purchases, and purchases below a stated amount, and may adopt regulations governing the financial terms of

contracts, as described in subsection A, including but not limited to the authority to negotiate with a seller or lessor the public or private sale of securities, the security interest which may be granted to a seller or lessor, and the types and value of property which may be acquired under such contracts. Approval of the Board or its designee and compliance with regulations adopted pursuant to this section shall be required in addition to and notwithstanding any other provision of law pertaining to the review, approval or award of contracts by agencies and institutions of the Commonwealth.

C. Notwithstanding any of the foregoing and except as the Board shall direct and authorize otherwise, every using agency shall procure through the Board all contracts for the financing of the purchases described in subsection A or other financial services needed for the purpose of financing such purchases. The Board may acquire such financing services, including, but is not limited to employing financial advisors and private or public placement agents.

D. An agency, institution, board, or authority which receives appropriations from the Commonwealth shall procure state agency energy efficiency projects under this section. State agency energy efficiency projects may include personal property, the installation or modification of an installation in a building, and professional, management, and other special services which are primarily intended to reduce energy consumption and demand, or allow the use of an alternative energy source, and which may contain integral control and measurement devices.

1986, c. 280, § 2.1-179.2; 1987, c. 613; 1991, c. 578; 1994, c. 231; 2001, c. 844.

§ 2.2-2418. Use of bond anticipation notes by the Treasury Board

Whenever the General Assembly has enacted legislation pursuant to Article X, Section 9 (b), (c), or (d) of the Constitution of Virginia authorizing the issuance of bonds for capital projects of the Commonwealth or any state agency, institution, board, or authority (a "state instrumentality") where debt service payments on the bonds are expected to be made in whole or in part from appropriations of the Commonwealth, the Board, with the consent of the Governor, may borrow money in anticipation of the issuance of the bonds to provide funds, with any other available funds, to pay the costs of acquiring, constructing, renovating, enlarging, improving, and equipping any one or more of the capital projects for which such bonds have been authorized. Any such borrowing shall be evidenced by notes of the Commonwealth that shall be in such form, shall be executed in such manner, shall bear interest at such rates, either at fixed rates or at rates established by formula or other method, and may contain such other provisions, all as the Board, or the State Treasurer when authorized by the Board, may determine. Such notes may bear interest at a rate subject to inclusion in gross income for federal income tax purposes as determined by the Board, with the consent of the Governor. Such notes may be made payable from the proceeds of the bonds, other notes, or other sources of funds authorized by the General Assembly. The proceeds of the notes, to the extent not required to pay the principal or interest on maturing notes, or expenses associated therewith, shall be paid or otherwise made available to the Commonwealth or appropriate state instrumentality to pay the costs of such capital projects. However, the undertaking and obligation

of (i) the Board to make such note proceeds available to the state instrumentality and (ii) the state instrumentality to pay or provide for the payment of the interest and principal coming due on the notes and to issue its own bonds or otherwise retire the notes within five years of the date of their initial issuance shall be set forth in a written agreement between the Board and the state instrumentality. No such notes shall be issued by the Board for or on behalf of a state instrumentality unless the Board first determines that such written agreement provides reasonable assurance of the full and timely payment of the debt service on the notes.

No law authorizing the issuance of bonds and notes for which bond anticipation notes have been issued by the Board shall be repealed or otherwise vitiated without first providing for the payment of the related bond anticipation notes of the Board.

1991, c. 554, § 2.1-179.3; 1996, cc. 636, 656; 2001, c. 844.

§ 2.2-2419. Issuance of refunding bonds by the Treasury Board

The Board may, with the consent of the Governor, sell and issue refunding bonds of the Commonwealth to refund any or all of the Commonwealth's bonds or other debt. The aggregate principal amount of such refunding bonds shall not exceed the amount required to redeem or otherwise provide for the payment of the unpaid principal of and interest on and any redemption premium payable on the bonds to be refunded to their date of redemption or payment, plus all expenses incurred in such refunding transaction.

1996, cc. 636, 656, § 2.1-179.4; 2001, c. 844.

§ 2.2-2420. Combined issuance of general obligation debt by the Treasury Board

Bonds and notes issued by the Board may be issued and sold at the same time with other bonds and notes issued by the Board either as separate issues, a combined issue, or a combination of both.

1996, cc. 636, 656, § 2.1-179.5; 2001, c. 844.

Article 9 - BOARD ON VETERANS' AFFAIRS

§§ 2.2-2421 through 2.2-2422. Repealed

Repealed by Acts 2003, cc. 657 and 670.

Article 10 - VIRGINIA GEOGRAPHIC INFORMATION NETWORK ADVISORY BOARD

§ 2.2-2423. Virginia Geographic Information Network Advisory Board; membership; terms; quorum; compensation and expenses

A. The Virginia Geographic Information Network Advisory Board (the Board) is hereby established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The Board shall advise the Geographic Information Network Division (the Division) of

the Virginia Information Technologies Agency on issues related to the exercise of the Division's powers and duties.

B. The Board shall consist of 16 members appointed as follows: seven nonlegislative citizen members to be appointed by the Governor that consist of one agency director from one of the natural resources agencies, one official from a state university, one elected official representing a local government in the Commonwealth, one member of the Virginia Association of Surveyors, one representative of a utility or transportation industry utilizing geographic data, and two representatives of private businesses with expertise and experience in the establishment, operation, and maintenance of geographic information systems; four members of the House of Delegates to be appointed by the Speaker of the House of Delegates; two members of the Senate to be appointed by the Senate Committee on Rules; the Chief Information Officer, the Commissioner of Highways, and the Chief Executive Officer of the Economic Development Partnership Authority or their designees who shall serve as ex officio, voting members. Gubernatorial appointees may be nonresidents of the Commonwealth. All members of the Board appointed by the Governor shall be confirmed by each house of the General Assembly. The agency director and state university official appointed by the Governor may each designate a member of his organization as an alternate who may attend meetings in his place and be counted as a member of the Board for the purposes of a quorum.

Any members of the Board who are representatives of private businesses that provide geographic information services, and their companies, are precluded from contracting to provide goods or services to the Division.

C. Legislative members' terms shall be coincident with their terms of office. The gubernatorial appointees to the Board shall serve five-year terms, except for the initial appointees whose terms were staggered. Members appointed by the Governor shall serve no more than two consecutive five-year terms. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the same manner as the original appointments. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility to serve.

D. The Board shall elect from its membership a chairman, vice-chairman, and any other officers deemed necessary. The duties and terms of the officers shall be prescribed by the members. A majority of the Board shall constitute a quorum. The Board shall meet at least quarterly or at the call of its chairman or the Chief Information Officer.

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

of compensation and expenses of the members shall be provided by the Virginia Geographic Information Network Division of the Virginia Information Technologies Agency.

F. The Geographic Information Network Division shall provide staff support to the Board.

1997, c. 817, § 2.1-563.41; 1999, cc. 412, 421, 433; 2001, c. 844; 2003, cc. 981, 1021; 2004, c. 1000; 2010, c. 869; 2014, c. 283.

Article 11 - VIRGINIA-ISRAEL ADVISORY BOARD

§ 2.2-2424. Virginia-Israel Advisory Board; purpose; membership; terms; compensation and expenses; staff; chairman's executive summary

A. The Virginia-Israel Advisory Board (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Board shall be to advise the Governor on ways to improve economic and cultural links between the Commonwealth and the State of Israel, with a focus on the areas of commerce and trade, art and education, and general government.

B. The Board shall consist of 31 members that include 29 citizen members and two ex officio members as follows: six citizen members appointed by the Speaker of the House of Delegates, who may be members of the House of Delegates or other state or local elected officials; six citizen members appointed by the Senate Committee on Rules, who may be members of the Senate or other state or local elected officials; 13 members appointed by the Governor who represent business, industry, education, the arts, and government; the president, or his designee, of each of the four Jewish Community Federations serving the Richmond, Northern Virginia, Tidewater and Peninsula regions; and the Secretary of Commerce and Trade and the Secretary of Education, or their designees, who shall serve as ex officio voting members of the Board.

C. Nonlegislative citizen members appointed by the Governor shall serve for terms of four years and nonlegislative citizen members appointed by the Senate Committee on Rules and the Speaker of the House of Delegates shall serve for terms of two years. Legislative members and the Secretaries of Commerce and Trade, and Education, or their designees, shall serve terms coincident with their terms of office. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Vacancies shall be filled in the same manner as the original appointments. Any member may be reappointed for successive terms.

D. The members of the Board shall elect a chairman and vice-chairman annually from among its membership. The Board shall meet at such times as it deems appropriate or on call of the chairman. A majority of the members of the Board shall constitute a quorum.

E. Members shall receive no compensation for their services. However, all members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of the expenses of the members shall be provided by the Office of the Governor.

F. The Office of the Governor shall serve as staff to the Board.

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

1996, c. 97, §§ 9-350, 9-351, 9-353; 1997, c. 181; 2001, c. 844; 2003, c. 885; 2004, c. 1000.

§ 2.2-2425. Powers and duties of the Board
The Board shall have the power and duty to:

1. Undertake studies and gather information and data in order to accomplish its purposes as set forth in § 2.2-2424, and to formulate and present its recommendations to the Governor and the General Assembly.

2. Apply for, accept, and expend gifts, grants, or donations from public, quasi-public or private sources, including any matching funds as may be designated in the appropriation act, to enable it to better carry out its purposes.

3. Report annually its findings and recommendations to the Governor. The Board may make interim reports to the Governor as it deems advisable.

4. Account annually on its fiscal activities, including any matching funds received or expended by the Board.

1996, c. 97, § 9-352; 1997, c. 181; 2001, c. 844.

Article 12 - VIRGINIA PUBLIC BROADCASTING BOARD

§§ 2.2-2426 through 2.2-2433. Repealed
Repealed by Acts 2012, cc. 803 and 835, cl. 58.

Article 13 - VIRGINIA PUBLIC BUILDINGS BOARD

§ 2.2-2434. Repealed
Repealed by Acts 2012, cc. 803 and 835, cl. 5.

Article 14 - VIRGINIA VETERANS CARE CENTER BOARD OF TRUSTEES

§§ 2.2-2435 through 2.2-2437. Repealed
Repealed by Acts 2003, cc. 657 and 670.

Article 15 - VIRGINIA VETERANS CEMETERY BOARD

§§ 2.2-2438 through 2.2-2439. Repealed
Repealed by Acts 2003, cc. 657 and 670.

Article 16 - HERBERT H. BATEMAN VIRGINIA ADVANCED SHIPBUILDING AND CARRIER INTEGRATION CENTER BOARD

§§ 2.2-2440 through 2.2-2447. Expired

Expired.

Article 17 - VIRGINIA-ASIAN ADVISORY BOARD

§ 2.2-2448. Virginia-Asian Advisory Board established; purpose

The Virginia-Asian Advisory Board (the Board) is hereby established as an advisory board within the meaning of § 2.2-2100 in the executive branch of state government. The purpose of the Board shall be to advise the Governor on ways to improve economic and cultural links between the Commonwealth and Asian nations, with a focus on the areas of commerce and trade, art and education, and general government, and on issues affecting the Asian-American communities in the Commonwealth.

2001, c. 566, § 9-400; 2004, cc. 971, 1005.

§ 2.2-2449. Membership; terms; vacancies; chairman

The Board shall consist of 21 members to be appointed by the Governor as follows: 18 citizen members who shall represent business, education, the arts, and government, at least 11 of whom shall be of Asian descent; and the Secretaries of Commerce and Trade, Health and Human Resources, and Education, or their designees to serve as ex officio members of the Board.

Beginning July 1, 2012, appointments shall be staggered as follows: seven members for a term of two years, seven members for a term of three years, and seven members for a term of four years. Thereafter, citizen members shall serve for terms of four years. The Secretaries of Commerce and Trade, Health and Human Resources, and Education, or their designees, shall serve terms coincident with their terms of office. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. Any member may be reappointed for successive terms.

The members of the Board shall elect a chairman and vice-chairman annually.

Members shall receive no compensation for their services, but shall be reimbursed for their actual and necessary expenses in accordance with § 2.2-2823.

2001, c. 566, § 9-401; 2012, c. 502.

§ 2.2-2450. Powers and duties of the Board

The Board shall:

1. Undertake studies and gather information and data in order to accomplish its purposes as set forth in § 2.2-2448, and to formulate and present its recommendations to the Governor.

2. Apply for, accept, and expend gifts, grants, or donations from public, quasi-public or private sources, including any matching funds as may be designated in the Appropriation Act, to enable it to better carry out its purposes.

3. Report annually its findings and recommendations to the Governor. The Board may make interim reports to the Governor as it deems advisable.

4. Account annually on its fiscal activities, including any matching funds received or expended by the Board.

2001, c. 566, § 9-402.

§ 2.2-2451. Staff; cooperation from other state agencies

The Office of the Governor shall serve as staff to the Board. All agencies of the Commonwealth shall assist the Board upon request.

2001, c. 566, § 9-403.

Article 18 - BOARD OF VETERANS SERVICES

§ 2.2-2452. Board of Veterans Services; membership; terms; quorum; compensation; staff

A. The Board of Veterans Services (the Board) is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government. The Board shall have a total membership of 22 members that shall consist of five legislative members, 14 nonlegislative citizen members, and three ex officio members. Members shall be appointed as follows: three members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two members of the Senate to be appointed by the Senate Committee on Rules; and 14 nonlegislative citizen members to be appointed by the Governor. The Commissioner of the Department of Veterans Services, the Chairman of the Board of Trustees of the Veterans Services Foundation, and the Chairman of the Joint Leadership Council of Veterans Service Organizations, or their designees, shall serve ex officio with full voting privileges. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth.

In making appointments, the Governor shall endeavor to ensure a balanced geographical representation on the Board while at the same time selecting appointees of such qualifications and experience as will allow them to provide expertise and insight into:

1. Best practices in benefits claims services, medical and health care management, or cemetery operations;

2. Performance measurements and general management principles; and

3. Nonprofit volunteer operations and management.

Each of the three areas of expertise shall be represented on the Board by at least two different appointees per area of expertise in order to allow for the Board to be capable of developing reasonable and effective policy recommendations related to the services provided to veterans of the armed forces of the United States and their eligible spouses, orphans, and dependents by the Department of Veterans Services.

Legislative members and the Commissioner of the Department of Veterans Services shall serve terms coincident with their terms of office. Nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no House member shall serve more than four consecutive two-year terms, no Senate member shall serve more than two consecutive four-year terms, and no nonlegislative citizen member shall serve more than two consecutive four-year terms.

The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

B. The Board shall select a chairman from its membership and, pursuant to rules adopted by it, may elect one of its members as vice-chairman. The Commissioner of the Department of Veterans Services shall not be eligible to serve as chairman. The Board shall also elect one of its members as secretary. The Board shall meet at least three times a year at such times as it deems appropriate or on call of the chairman. A majority of the members of the Board shall constitute a quorum.

C. The Board shall be organized with at least three standing committees that shall be responsible for (i) veterans benefits, (ii) veterans care services, and (iii) veterans cemeteries.

D. The Department of Veterans Services shall provide staff to the Board.

2003, cc. 657, 670; 2004, c. 697; 2005, c. 758; 2008, cc. 467, 768; 2010, c. 64; 2012, cc. 33, 162; 2015, c. 319.

§ 2.2-2453. Compensation; expenses

Legislative members of the Board shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation as provided in § 2.2-2813 for the performance of their duties. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department of Veterans Services.

2003, cc. 657, 670; 2004, c. 1000.

§ 2.2-2454. Powers and duties of Board

The Board shall have the power and duty to:

1. Advise and make recommendations to the Commissioner of Veterans Services upon such matters as may arise in the performance of his duties;

2. Investigate issues related to the provision of care and services to veterans, upon request of the Commissioner of Veterans Services or the Governor;

3. Study all matters affecting the welfare of Virginia citizens who are veterans or dependents or survivors of such veterans, and make recommendations to the Commissioner of the Department of Veterans Services;

4. Develop recommendations for policies and procedures related to the efficient and effective delivery of the services provided by the Department of Veterans Services;

5. Establish policies related to the coordinated delivery of veterans services, in consultation with those agencies, entities, and organizations, including counties, cities, towns or other political subdivisions of the Commonwealth capable of providing such services;

6. Monitor the administration of all laws concerning veterans and their dependents;

7. Review and advise the Commissioner of the Department of Veterans Services on the Department's strategic plan;

8. Based on rigorous cost-benefit-value analysis, provide recommendations to the Department of Veterans Services regarding future projects and the acquisition of facilities that may benefit the State's veterans, including but not limited to veterans cemeteries and veterans care centers; and

9. Provide recommendations to the Department of Veterans Services and the Veterans Services Foundation created in § 2.2-2715 regarding gifts, grants, and other resources from public and private entities and organizations to support veterans services.

2003, cc. 657, 670.

Article 19 - CHARITABLE GAMING BOARD

§ 2.2-2455. Charitable Gaming Board; membership; terms; quorum; compensation; staff

A. The Charitable Gaming Board (the Board) is hereby established as a policy board within the meaning of § 2.2-2100 in the executive branch of state government. The purpose of the Board shall be to advise the Department of Agriculture and Consumer Services on all aspects of the conduct of charitable gaming in Virginia.

B. The Board shall consist of eleven members who shall be appointed in the following manner:

1. Six nonlegislative citizen members appointed by the Governor subject to confirmation by the General Assembly as follows: one member who is a member of a charitable organization subject to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in good standing with the Department; one member who is a charitable gaming supplier registered and in good standing with the Department; one member who is an owner, lessor, or lessee of premises where charitable gaming is conducted; one member who is or has been a law-enforcement officer in Virginia but who (i) is not a charitable gaming supplier registered with the Department, (ii) is not a lessor of premises where charitable gaming is conducted, (iii) is not a member of a charitable organization, or (iv) does not have an interest in or is not affiliated with such supplier or charitable organization or owner, lessor, or lessee of premises where charitable gaming is conducted; and two members who

do not have an interest in or are not affiliated with a charitable organization, charitable gaming supplier, or owner, lessor, or lessee of premises where charitable gaming is conducted;

2. Three nonlegislative citizen members appointed by the Speaker of the House of Delegates as follows: two members who are members of a charitable organization subject to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in good standing with the Department and one member who does not have an interest in or is not affiliated with a charitable organization, charitable gaming supplier, or owner, lessor, or lessee of premises where charitable gaming is conducted; and

3. Two nonlegislative citizen members appointed by the Senate Committee on Rules as follows: one member who is a member of a charitable organization subject to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2 in good standing with the Department and one member who does not have an interest in or is not affiliated with a charitable organization, charitable gaming supplier, or owner, lessor, or lessee of premises where charitable gaming is conducted.

To the extent practicable, the Board shall consist of individuals from different geographic regions of the Commonwealth. Each member of the Board shall have been a resident of the Commonwealth for a period of at least three years next preceding his appointment, and his continued residency shall be a condition of his tenure in office. Members shall be appointed for four-year terms. Vacancies shall be filled by the appointing authority in the same manner as the original appointment for the unexpired portion of the term. Each Board member shall be eligible for reappointment for a second consecutive term at the discretion of the appointing authority. Persons who are first appointed to initial terms of less than four years shall thereafter be eligible for reappointment to two consecutive terms of four years each. No sitting member of the General Assembly shall be eligible for appointment to the Board. The members of the Board shall serve at the pleasure of the appointing authority.

C. The Board shall elect from among its members a chairman who is a member of a charitable organization subject to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2. The Board shall elect a vice-chairman from among its members.

D. A quorum shall consist of five members. The decision of a majority of those members present and voting shall constitute a decision of the Board.

E. For each day or part thereof spent in the performance of his duties, each member of the Board shall receive such compensation and reimbursement for his reasonable expenses as provided in § 2.2-2104.

F. The Board shall adopt rules and procedures for the conduct of its business, including a provision that Board members shall abstain or otherwise recuse themselves from voting on any matter in which they or a member of their immediate family have a personal interest in a transaction as defined in § 2.2-3101. The Board shall meet at least four times a year, and other meetings may be held at any time or place determined by the Board or upon call of the chairman or upon a written request to the chairman by any two members. Except for emergency meetings and meetings

governed by § 2.2-3708 requiring a longer notice, all members shall be duly notified of the time and place of any regular or other meeting at least 10 days in advance of such meeting.

G. Staff to the Board shall be provided by the Department of Agriculture and Consumer Services.

2003, c. 884; 2008, cc. 387, 689; 2015, c. 755.

§ 2.2-2456. Duties of the Charitable Gaming Board
The Board shall:

1. Promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) not inconsistent with the laws of Virginia necessary to carry out the provisions of this chapter and the provisions of Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2. Such regulations may include penalties for violations;

2. Advise the Department of Agriculture and Consumer Services on the conduct of charitable gaming in Virginia and recommend changes to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2; and

3. Keep a complete and accurate record of its proceedings. A copy of such record and any other public records not exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.) shall be available for public inspection and copying during regular office hours at the Department of Agriculture and Consumer Services.

2003, c. 884; 2008, cc. 387, 689.

Article 20 - INFORMATION TECHNOLOGY INVESTMENT BOARD

§§ 2.2-2457 through 2.2-2458.1. Repealed
Repealed by Acts 2010, cc. 136 and 145, cl. 2, effective March 11, 2010.

Article 21 - LATINO ADVISORY BOARD

§ 2.2-2459. Latino Advisory Board; membership; terms; compensation and expenses
A. The Latino Advisory Board (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government. The Board shall consist of 21 nonlegislative citizen members, at least 15 of whom shall be of Latino descent, who shall be appointed by the Governor and serve at his pleasure. In addition, the Secretaries of the Commonwealth, Commerce and Trade, Education, Health and Human Resources, Public Safety, and Transportation, or their designees shall serve as ex officio members without voting privileges. All members shall be residents of the Commonwealth.

B. After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies shall be for the unexpired terms. No member shall be eligible to serve more than two successive four-year terms; however, after the expiration of the remainder of a term to which a member was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto.

C. The Board shall elect from its membership a chairman and vice-chairman. A majority of the members of the Board shall constitute a quorum. Meetings of the Board shall be limited to four per year and shall be held upon the call of the chairman or whenever the majority of the members so request.

D. Members of the Board shall receive no compensation for their services, but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

2005, c. 636.

§ 2.2-2460. Powers and duties; acceptance of gifts and grants

A. The Board shall have the power and duty to:

1. Advise the Governor regarding the development of economic, professional, cultural, educational, and governmental links between the Commonwealth of Virginia, the Latino community in Virginia, and Latin America;

2. Undertake studies, symposiums, research, and factual reports to gather information to formulate and present recommendations to the Governor relative to issues of concern and importance to the Latino community in the Commonwealth; and

3. Advise the Governor as needed regarding any statutory, regulatory, or other issues of importance to the Latino community in the Commonwealth.

B. The Board may apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives.

2005, c. 636.

§ 2.2-2461. Staff; cooperation from other state agencies

The Office of the Governor shall serve as staff to the Board. All agencies of the Commonwealth shall assist the Board upon request.

2005, c. 636.

Article 22 - OPEN EDUCATION CURRICULUM BOARD

§§ 2.2-2462 through 2.2-2464. Repealed

Repealed by Acts 2013, c. 372, cl. 2.

Article 23 - VIRGINIA WAR MEMORIAL BOARD

§ 2.2-2465. Virginia War Memorial Board; purpose; membership; terms; compensation and expenses; staff; chairman's executive summary

A. The Virginia War Memorial Board (the Board) is established as an advisory board within the meaning of § 2.2-2100 for the purpose of supporting the Virginia War Memorial.

B. The Board shall have a total membership of 24 members that shall consist of 10 legislative members, 10 nonlegislative citizen members, and four ex officio members as follows: six members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; four members of the Senate to be appointed by the Senate Committee on Rules; 10 nonlegislative citizen members appointed by the Governor, subject to confirmation by the General Assembly; and the Commissioner of the Department of Veterans Services, the Chairman of the Board of Veterans Services, the Chairman of the Joint Leadership Council of Veterans Service Organizations, and the Chairman of the Virginia War Memorial Education Foundation, or their designees, who shall serve ex officio with voting privileges. A majority of the Board shall be members or veterans of the armed forces of the United States or the Virginia National Guard. Members appointed should include representatives of some or all of the various veterans organizations active in Virginia, as the Governor deems appropriate.

C. Except for initial appointments, all nonlegislative citizen member appointments shall be for terms of three years. Legislative members, the Commissioner of Veterans Services, the Chairman of the Board of Veterans Services, the Chairman of the Joint Leadership Council of Veterans Service Organizations, and the Chairman of the Virginia War Memorial Education Foundation shall serve terms coincident with their terms of office. All members may be reappointed. However, no nonlegislative citizen member shall be eligible to serve for more than four successive three-year terms. No Senate member shall be eligible to serve more than three successive four-year terms and no member of the House of Delegates shall be eligible to serve more than six successive two-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. Members appointed by the Governor shall serve at his pleasure.

D. Legislative members of the Board shall receive such compensation as is set forth in § 30-19.12. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation of legislative members shall be provided by the Office of the Clerk of the Senate or the Office of the Clerk of the House of Delegates, as appropriate. Funding for the costs of expenses of all members shall be provided by the Virginia War Memorial Division of the Department of Veterans Services.

E. The Department of Veterans Services shall provide the Board with administrative and other services.

F. The Board shall adopt bylaws governing their organization and procedures and may amend the same. The Board shall elect from their number a chairman, vice-chairman, and such other officers as their bylaws may provide. They shall also appoint an executive committee, composed of not

fewer than five members, which committee shall exercise the powers and duties imposed on the Board by this section to the extent permitted by the Board in their bylaws. The Board shall meet at least three times a year. Meetings of the Board and the executive committee shall be held at the call of the Commissioner of the Department of Veterans Services, the chairman of the Board, or whenever a majority of the members so request. A majority of members shall constitute a quorum.

G. The chairman of the Board shall submit such reports electronically as required by the Commissioner of Veterans Services.

2012, cc. 803, 835; 2013, c. 234.

§ 2.2-2466. Authority of Board

The Board shall have the power and duty to advise and make recommendations to the Commissioner of the Department of Veterans Services concerning:

1. The management, control, maintenance, and operation of the Virginia War Memorial, including the contents, furnishings, grounds, funds, property, and endowments thereof;

2. Fees for the use of the Memorial;

3. Programs and activities that may and should be carried out at the Memorial; and

4. Regulations for the use of and visitation to the Memorial.

2012, cc. 803, 835; 2013, c. 234.

§§ 2.2-2467 through 2.2-2469. Repealed

Repealed by Acts 2013, c. 234, cl. 2.

Article 24 - VIRGINIA BOARD OF WORKFORCE DEVELOPMENT

§ 2.2-2470. Definitions

As used in this article:

"Local workforce development board" means a local workforce development board established under § 107 of the WIOA.

"One stop" means a conceptual approach to service delivery intended to provide a single point of access for receiving a wide range of workforce development and employment services, either on-site or electronically, through a single system.

"One-stop center" means a physical site where employment and career services are provided, either on site or electronically, and access to career services, training services, and other partner program services are available for employers, employees, and job seekers.

"One-stop operator" means a single entity or consortium of entities that operate a one-stop center or centers. Operators may be public or private entities competitively selected by a local workforce board.

"WIOA" means the federal Workforce Innovation and Opportunity Act of 2014 (P.L. 113-128).

2014, c. 815; 2015, cc. 275, 292, 435.

§ 2.2-2471. Virginia Board of Workforce Development; purpose; membership; terms; compensation and expenses; staff

A. The Virginia Board of Workforce Development (the Board) is established as a policy board, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Board shall be to assist and advise the Governor, the General Assembly, and the Chief Workforce Development Advisor in meeting workforce development needs in the Commonwealth through recommendation of policies and strategies to increase coordination and thus efficiencies of operation between all education and workforce programs with responsibilities and resources for employment, occupational training, and support connected to workforce credential and job attainment.

B. The Board shall consist of the following:

1. Two members of the House of Delegates to be appointed by the Speaker of the House of Delegates and two members of the Senate to be appointed by the Senate Committee on Rules. Legislative members shall serve terms coincident with their terms of office and may be reappointed for successive terms;

2. The Governor or his designee who shall be selected from among the cabinet-level officials appointed to the Board pursuant to subdivision 3;

3. The Secretaries of Commerce and Trade, Education, Health and Human Resources, and Veterans Affairs and Homeland Security, or their designees, each of whom shall serve ex officio;

4. The Chancellor of the Virginia Community College System or his designee, who shall serve ex officio;

5. One local elected official appointed by the Governor;

6. Two representatives nominated by state labor federations and appointed by the Governor; and

7. Fourteen nonlegislative citizen members representing the business community appointed by the Governor, to include the presidents of the Virginia Chamber of Commerce and the Virginia Manufacturers Association, one representative of proprietary employment training schools, and the remaining members who are business owners, chief executive officers, chief operating officers, chief financial officers, senior managers, or other business executives or employers with optimum policy-making or hiring authority who represent life sciences and health care, information technology and cyber security, manufacturing, and other industry sectors that represent the Commonwealth's economic development priorities. Business members shall represent diverse regions of the state, to include urban, suburban, and rural areas, and at least two members shall also be members of local workforce development boards. Nonlegislative citizen members may be nonresidents of the Commonwealth. Members appointed in accordance with this subdivision shall serve four-year terms, subject to the pleasure of the Governor, and may be reappointed.

C. The Governor shall select a chairman and vice-chairman, who shall serve two-year terms, from among the 14 nonlegislative citizen members representing the business community appointed in accordance with subdivision B 7. The Board shall meet at least every three months or upon the call of the chair or the Governor as stipulated by the Board's bylaws. The chairman and the vice-chairman shall select at least five members of the Board to serve as an executive committee of the Board, which shall have the limited purpose of establishing meeting agendas, reviewing bylaws and other documents pertaining to Board governance and operations, approving reports to the Governor, and responding to urgent federal, state, and local issues between scheduled Board meetings.

D. Compensation and reimbursement of expenses of the members shall be as follows:

1. Legislative members appointed in accordance with subdivision B 1 shall receive such compensation and reimbursement of expenses incurred in the performance of their duties as provided in §§ 2.2-2813, 2.2-2825, and 30-19.12.

2. Members of the Board appointed in accordance with subdivision B 2, B 3, or B 4 shall not receive compensation but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

3. Members of the Board appointed in accordance with subdivision B 5, B 6, or B 7 shall not receive compensation but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

Funding for the costs of compensation and expenses of the members shall be provided from federal funds received under the WIOA.

2014, c. 815; 2015, cc. 275, 292.

§ 2.2-2471.1. Executive Director; staff support

A. Board staffing shall be led by a full-time Executive Director to be supervised by the Chief Workforce Development Advisor. Additional staff support, including staffing of standing committees, may include other directors or coordinators of relevant education and workforce programs as requested by the Chief Workforce Development Advisor and as in-kind support to the Board from agencies administering workforce programs.

B. The Chief Workforce Development Advisor shall enter into a written agreement with agencies administering workforce programs regarding supplemental staff support to Board committees and other logistical support for the Board. Such written agreements shall be provided to members of the Board upon request. Funding for a full-time Executive Director position shall be provided by the WIOA, and such position shall be dedicated to the support of the Board's operations and outcomes and the Board's operational budget as agreed upon and referenced in a written agreement between the Chief Workforce Development Advisor and the agencies administering workforce programs.

2015, cc. 275, 292.

§ 2.2-2472. Powers and duties of the Board; Virginia Workforce System created

A. The Board shall implement a Virginia Workforce System that shall undertake the following actions to implement and foster workforce development and training and better align education and workforce programs to meet current and projected skills requirements of an increasingly technological, global workforce:

1. Provide policy advice to the Governor on workforce and workforce development issues in order to create a business-driven system that yields increasing rates of attainment of workforce credentials in demand by business and increasing rates of jobs creation and attainment;

2. Provide policy direction to local workforce development boards;

3. Assist the Governor in the development, implementation, and modification of any combined state plan developed pursuant to the WIOA;

4. Identify current and emerging statewide workforce needs of the business community;

5. Forecast and identify training requirements for the new workforce;

6. Recommend strategies to match trained workers with available jobs to include strategies for increasing business engagement in education and workforce development;

7. Evaluate the extent to which the state's workforce development programs emphasize education and training opportunities that align with employers' workforce needs and labor market statistics and report the findings of this analysis to the Governor every two years;

8. Develop pay-for-performance contract strategy incentives for rapid reemployment services consistent with the WIOA as an alternative model to traditional programs;

9. Conduct a review of budgets, which shall be submitted annually to the Board by each agency conducting federal and state funded career and technical and adult education and workforce development programs, that identify the agency's sources and expenditures of administrative, workforce education and training, and support services for workforce development programs;

10. Review and recommend industry credentials that align with high demand occupations, which credentials shall include the Career Readiness Certificate;

11. (Effective until October 1, 2016) Define the Board's role in certifying WIOA training providers, including those not subject to the authority expressed in Chapter 21.1 (§ 23-276.1 et seq.) of Title 23;

11. (Effective October 1, 2016) Define the Board's role in certifying WIOA training providers, including those not subject to the authority expressed in Article 3 (§ 23.1-213 et seq.) of Chapter 2 of Title 23.1;

12. Provide an annual report to the Governor concerning its actions and determinations under subdivisions 1 through 11;

13. Create quality standards, guidelines, and directives applicable to local workforce development boards and the operation of one-stops, as necessary and appropriate to carry out the purposes of this article; and

14. Perform any act or function in accordance with the purposes of this article.

B. The Board may establish such committees as it deems necessary including the following:

1. A committee to accomplish the federally mandated requirements of the WIOA;

2. An advanced technology committee to focus on high-technology workforce training needs and skills attainment solutions through sector strategies, career readiness, and career pathways;

3. A performance and accountability committee to coordinate with the Virginia Employment Commission, the State Council of Higher Education for Virginia, the Virginia Community College System, and the Council on Virginia's Future to develop the metrics and measurements for publishing comprehensive workforce score cards and other longitudinal data that will enable the Virginia Workforce System to measure comprehensive accountability and performance; and

4. A military transition assistance committee to focus on workforce development and employment of veterans and on reducing process and qualification barriers to training and employment services.

C. The Board and the Governor's cabinet secretaries shall assist the Governor in complying with the provisions of the WIOA and ensuring the coordination and effectiveness of all federal and state funded career and technical and adult education and workforce development programs and providers within Virginia's Workforce System.

D. The Board shall assist the Governor in the following areas with respect to workforce development: development of any combined state plan developed pursuant to the WIOA; development and continuous improvement of a statewide workforce development system that ensures career readiness and coordinates and aligns career and technical education, adult education, and federal and state workforce programs; development of linkages to ensure coordination and non-duplication among programs and activities; designation of local areas; development of local discretionary allocation formulas; development and continuous improvement of comprehensive state performance measures including, without limitation, performance measures reflecting the degree to which one-stop centers provide comprehensive services with all mandatory partners and the degree to which local workforce development boards have obtained funding from sources other than the WIOA; preparation of the annual report to the U.S. Secretary of Labor; development of a statewide employment statistics system; and development of a statewide system of one-stop centers that provide comprehensive workforce services to employers, employees, and job seekers.

The Board shall share information regarding its meetings and activities with the public.

E. Each local workforce development board shall develop and submit to the Governor and the Virginia Board an annual workforce demand plan for its workforce development board area based on

a survey of local and regional businesses that reflects the local employers' needs and requirements and the availability of trained workers to meet those needs and requirements. Local boards shall also designate or certify one-stop operators; identify eligible providers of youth activities; develop a budget; conduct local oversight of one-stop operators and training providers in partnership with its local chief elected official; negotiate local performance measures, including incentives for good performance and penalties for inadequate performance; assist in developing statewide employment statistics; coordinate workforce development activities with economic development strategies and the annual demand plan, and develop linkages among them; develop and enter into memoranda of understanding with one-stop partners and implement the terms of such memoranda; promote participation by the private sector; actively seek sources of financing in addition to WIOA funds; report performance statistics to the Board; and certify local training providers in accordance with criteria provided by the Board. Further, a local training provider certified by any workforce development board has reciprocal certification for all workforce development boards.

F. Each workforce development board shall develop and execute a strategic plan designed to combine public and private resources to support sector strategies, career pathways, and career readiness skills development. Such initiatives shall include or address (i) a regional vision for workforce development; (ii) protocols for planning workforce strategies that anticipate industry needs; (iii) the needs of incumbent and underemployed workers in the region; (iv) the development of partners and guidelines for various forms of on-the-job training, such as registered apprenticeships; (v) the setting of standards and metrics for operational delivery; (vi) alignment of monetary and other resources, including private funds and in-kind contributions, to support the workforce development system; and (vii) the generation of new sources of funding to support workforce development in the region.

G. Local workforce development boards are encouraged to implement pay-for-performance contract strategy incentives for rapid reemployment services consistent within the WIOA as an alternative model to traditional programs. Such incentives shall focus on (i) partnerships that lead to placements of eligible job seekers in unsubsidized employment and (ii) placement in unsubsidized employment for hard-to-serve job seekers. At the discretion of the local workforce development board, funds to the extent permissible under §§ 128(b) and 133(b) of the WIOA may be allocated for pay-for-performance partnerships.

H. Each chief local elected official shall consult with the Governor regarding designation of local workforce development areas; appoint members to the local board in accordance with state criteria; serve as the local grant recipient unless another entity is designated in the local plan; negotiate local performance measures with the Governor; ensure that all mandated partners are active participants in the local workforce development board and one-stop center; and collaborate with the local workforce development board on local plans and program oversight.

I. Each local workforce development board shall develop and enter into a memorandum of understanding concerning the operation of the one-stop delivery system in the local area with each entity that carries out any of the following programs or activities:

1. Programs authorized under Title I of the WIOA;

2. Programs authorized under the Wagner-Peyser Act (29 U.S.C. § 49 et seq.);

3. Adult education and literacy activities authorized under Title II of the WIOA;

4. Programs authorized under Title I of the Rehabilitation Act of 1973 (29 U.S.C. § 720 et seq.);

5. Postsecondary career and technical education activities authorized under the Carl D. Perkins Vocational and Applied Technology Education Act (20 U.S.C. § 2301 et seq.);

6. Activities authorized under Chapter 2 of Title II of the Trade Act of 1974 (19 U.S.C. § 2271 et seq.);

7. Activities pertaining to employment and training programs for veterans authorized under 38 U.S.C. § 4100 et seq.;

8. Programs authorized under Title 60.2, in accordance with applicable federal law;

9. Workforce development activities or work requirements of the Temporary Assistance to Needy Families (TANF) program known in Virginia as the Virginia Initiative for Employment, Not Welfare (VIEW) program established pursuant to § 63.2-608;

10. Workforce development activities or work programs authorized under the Food Stamp Act of 1977 (7 U.S.C. § 2011 et seq.);

11. Other programs or activities as required by the WIOA; and

12. Programs authorized under Title I of the WIOA.

J. The quorum for a meeting of a local workforce development board shall consist of a majority of both the private sector and public sector members. Each local workforce development board shall share information regarding its meetings and activities with the public.

K. For the purposes of implementing the WIOA, income from service in the Virginia National Guard shall not disqualify unemployed service members from WIOA-related services.

L. The Chief Workforce Development Advisor shall be responsible for the coordination of the Virginia Workforce System and the implementation of the WIOA.

2014, c. 815; 2015, cc. 191, 275, 292, 435.

§ 2.2-2472.1. Regional convener designation required; development of regional workforce pipelines and training solutions

A. As used in this section, "regional convener" means the local workforce development board having responsibility for coordinating business, economic development, labor, regional planning

commissions, education at all levels, and human services organizations to focus on community workforce issues and the development of solutions to current and prospective business needs for a skilled labor force at the regional level.

B. As a condition of receiving WIOA funds, each local workforce development board shall either be designated as the regional convener for the WIOA region or enter into a memorandum of agreement supporting the public or private entity identified as serving as the regional convener.

C. Each regional convener shall develop, in collaboration with other workforce development entities in the region, a local plan for employer engagement. The plan shall (i) specify the policies and protocols to be followed by all of the region's workforce development entities when engaging the region's employers, (ii) address how the region's workforce entities will involve employers in the formation of new workforce development initiatives, and (iii) identify what activities will be undertaken to address employers' specific workforce needs. Each region's plan should be reviewed by the Virginia Board of Workforce Development, and the board should recommend changes to the plans to ensure consistency across regions.

2015, cc. 275, 292.

§ 2.2-2472.2. Minimum levels of fiscal support from WIOA Adult and Dislocated Worker funds by local workforce development boards; incentives

A. Each local workforce development board shall allocate a minimum of 40 percent of WIOA Adult and Dislocated Worker funds to training services as defined under § 134(c)(3)(D) of the WIOA that lead to recognized postsecondary education and workforce credentials aligned with in-demand industry sectors or occupations in the local area or region. Beginning October 1, 2016, and biannually thereafter, the Chief Workforce Development Advisor shall submit a report to the Board evaluating the rate of the expenditure of WIOA Adult and Dislocated Worker funds under this section.

B. Failure by a local workforce development board to meet the required training expenditure percentage requirement shall result in sanctions, to increase in severity for each year of noncompliance. These sanctions may include corrective action plans; ineligibility to receive state-issued awards, additional WIOA incentives, or sub-awards; the recapturing and reallocation of a percentage of the local area board's Adult and Dislocated Worker funds; or for boards with recurring noncompliance, development of a reorganization plan through which the Governor would appoint and certify a new local board.

C. The Virginia Community College System, in consultation with the Governor, shall develop a formula providing for 30 percent of WIOA Adult and Dislocated Worker funds reserved by the Governor for statewide activities to be used solely for providing incentives to postsecondary workforce training institutions through local workforce development boards to accelerate the increase of workforce credential attainment by participants. Fiscal incentive awards provided under this section must be expended on training activities that lead participants to a postsecondary education or workforce credential that is aligned with in-demand industry sectors or occupations within each

local workforce area. Apprenticeship-related instruction shall be included as a qualifying training under this subsection if such instruction is provided through a postsecondary education institution.

2015, cc. 275, 292.

§ 2.2-2473. Regional workforce training centers

A. Regional workforce training centers shall be established at institutions within the Virginia Community College System in the Peninsula, Southside, Central Virginia, and Western Tidewater regions to assist the Board in (i) coordinating specific high-skill training, (ii) developing industry standards and related curricula, and (iii) providing skills assessments.

B. The Virginia Community College System shall evaluate other regional workforce center locations and recommend to the Board their establishment as such needs are identified. The Virginia Community College System shall support regional workforce training centers created by the Regional Competitiveness Act (§ 15.2-1306 et seq.) in which community colleges participate.

C. Approved noncredit workforce training programs offered by community colleges may receive general fund support as provided in the appropriation act.

2014, c. 815.

§ 2.2-2474. Authorization of facilities use and equipment rental; fees

Workforce training students at local community college boards and public institutions of higher education may be required to pay facility use and equipment rental fees beyond regular tuition charges for workforce training programs requiring specialized facilities or equipment. Such fees shall either be paid by such students directly to the provider of the facility or equipment or to the college for reimbursement to such provider. The fees shall be no more than the normal fees charged to the general public for the same or similar facilities or equipment. The nature of each fee authorized by this section shall be described in course schedules. All fees authorized by this section shall be reported annually to the Virginia Community College System and public institutions' boards.

2014, c. 815.

§ 2.2-2475. Trade secrets

Trade secrets that a nonpublic body submits as an offeror in connection with a proposed workforce training program shall not be subject to disclosure under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). However, such offeror shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

2014, c. 815.

§ 2.2-2476. Workforce Training Access Program and Fund

A. To facilitate the employment of residents of the Commonwealth, to provide a qualified and competent workforce for Virginia's employers, and to promote the industrial and economic development of the Commonwealth, which purposes are declared and determined to be public purposes, there is created the Workforce Training Access Program, to be administered by the Secretary of Finance as provided in this section.

B. From such funds as are appropriated for this purpose and from such gifts, donations, grants, bequests, and other funds as may be received on its behalf, there is created in the state treasury a special nonreverting fund to be known as the Workforce Training Access Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

The assets of the Fund shall be reserved, invested, and expended solely pursuant to and for the purposes of this section and shall not be expended or otherwise transferred or used by the Commonwealth for any other purpose. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the Secretary of Finance only as a guaranty of payment of workforce training loans made by a national student loan marketing association pursuant to the provisions of this section.

C. (Effective until October 1, 2016) The Secretary of Finance is authorized to enter into an agreement with a national student loan marketing association that shall originate, fund, and service workforce training loans in accordance with the provisions of this section to persons enrolled in workforce training courses and programs that the Virginia Board of Workforce Development has certified to be responding to the technology needs of business and industry in the Commonwealth pursuant to § 2.2-2472.

The terms and conditions of such workforce training loans shall be consistent with market conditions and shall provide a repayment sufficient to amortize the cost of the training over its expected useful life, not to exceed 60 months. No person may receive a workforce training loan or loans that would result in that person owing an outstanding amount in excess of the tuition and required fees for the certified workforce training course or program in which such person participates.

Only persons (i) who have established domicile in Virginia, as provided in § 23-7.4 or (ii) who are employed in Virginia and whose employers make loan repayments directly by payroll deduction or tuition assistance, before providing for the training needs of other students in such certified courses, shall be eligible to receive workforce training loans. Nothing herein shall be construed to impose an obligation upon an employer to make loan payments or to continue tuition assistance after termination of the student's employment.

Consistent with Article VIII, Sections 10 and 11 of the Constitution of Virginia, the assets of the Fund shall be pledged as a guaranty of payment of workforce training loans made by such national student loan marketing association and may be expended in satisfaction of the guaranty obligations incurred thereby. Neither the Commonwealth nor any of its agencies, political subdivisions, or employees shall have any other or further liability in connection with such workforce training loans.

The agreement shall provide for annual evaluation by such national student loan marketing association and the Secretary of Finance, or his designee, of the aggregate unpaid amount of workforce training loans that such national student loan marketing association shall make available hereunder. Such association shall agree to make available workforce training loans in an aggregate unpaid amount of not less than five times the amount of all cash, cash equivalents, investments, and other assets that would then be available in the Fund.

C. (Effective October 1, 2016) The Secretary of Finance is authorized to enter into an agreement with a national student loan marketing association that shall originate, fund, and service workforce training loans in accordance with the provisions of this section to persons enrolled in workforce training courses and programs that the Virginia Board of Workforce Development has certified to be responding to the technology needs of business and industry in the Commonwealth pursuant to § 2.2-2472.

The terms and conditions of such workforce training loans shall be consistent with market conditions and shall provide a repayment sufficient to amortize the cost of the training over its expected useful life, not to exceed 60 months. No person may receive a workforce training loan or loans that would result in that person owing an outstanding amount in excess of the tuition and required fees for the certified workforce training course or program in which such person participates.

Only persons (i) who have established domicile in Virginia, as provided in § 23.1-502 or (ii) who are employed in Virginia and whose employers make loan repayments directly by payroll deduction or tuition assistance, before providing for the training needs of other students in such certified courses, shall be eligible to receive workforce training loans. Nothing herein shall be construed to impose an obligation upon an employer to make loan payments or to continue tuition assistance after termination of the student's employment.

Consistent with Article VIII, Sections 10 and 11 of the Constitution of Virginia, the assets of the Fund shall be pledged as a guaranty of payment of workforce training loans made by such national student loan marketing association and may be expended in satisfaction of the guaranty obligations incurred thereby. Neither the Commonwealth nor any of its agencies, political subdivisions, or employees shall have any other or further liability in connection with such workforce training loans.

The agreement shall provide for annual evaluation by such national student loan marketing association and the Secretary of Finance, or his designee, of the aggregate unpaid amount of workforce training loans that such national student loan marketing association shall make available hereunder. Such association shall agree to make available workforce training loans in an aggregate unpaid amount of not less than five times the amount of all cash, cash equivalents, investments, and other assets that would then be available in the Fund.

D. If such association ceases to make workforce training loans available as provided under the agreement, the Fund shall revert to the general fund of the Commonwealth, free of the restrictions imposed by this section, after payment of or provision for any outstanding obligations that the Fund guarantees.

2014, c. 815.

§ 2.2-2477. Virginia Career Readiness Certificate Program

A. There is created the Virginia Career Readiness Certificate Program (the Program) to certify the workplace and college readiness skills of Virginians, in order to better prepare them for continued education and workforce training, successful employment, and career advancement.

B. The Program may be offered through public high schools, community colleges, one-stop centers, technical centers, vocation rehabilitation centers, the Department of Corrections, the Department of Juvenile Justice, institutions of higher education, and any other appropriate institutions as determined by the Virginia Board of Workforce Development.

C. The Program shall include, but not be limited to, the following:

1. A multilevel Career Readiness Certificate and related pre-instructional assessment tool to quantify an individual's level of proficiency in the following measurable work-ready skills: (i) reading, (ii) applied math, (iii) locating information, and (iv) any additional skills necessary to meet business and industry skill demand;

2. Targeted instruction and remediation skills training to address those work-ready skills in which the individual is not proficient as measured by the pre-instructional assessment tool designed to meet identified specific skill needs of local employers;

3. A Career Readiness Certificate awarded to individuals upon successful attainment of work-ready skills as documented by the assessment tool; and

4. A statewide online data system to serve as the repository for Career Readiness Certificate attainment data. The system shall (i) serve as the administrative tool to administer and help promote the Program; (ii) incorporate online services that enable employers to search individual Career Readiness Certificate data to determine skill levels and locate certified individuals in the state or a region; and (iii) incorporate online services that offer individuals tools for career exploration, continued education opportunities, job-readiness practice, and job search capabilities. The Virginia Board of Workforce Development shall seek to ensure the confidentiality of individual Career

Readiness Certificate recipients. This shall include provisions for individuals, except for employer-sponsored individuals, to opt in and opt out of the statewide online data system at any test occurrence. Additionally, the provisions of §§ 2.2-3800 through 2.2-3803 shall be considered in individual confidentiality protections adopted by the Virginia Board of Workforce Development.

D. The Board, in consultation with the Secretary of Education, shall develop policies and guidelines necessary to implement and administer the Program.

E. The Board shall report Program outcomes to the Governor and the Senate Commerce and Labor Committee, Senate Education and Health Committee, House Commerce and Labor Committee, and House Education Committee of the General Assembly by December 1 of each year. The report shall make recommendations for improving the program, including funding recommendations.

2014, c. 815.

Article 25 - ADVISORY BOARD ON SERVICE AND VOLUNTEERISM

§ 2.2-2478. (Expires July 1, 2018) Advisory Board on Service and Volunteerism; purpose
The Advisory Board on Service and Volunteerism (the Board) is established as an advisory board, within the meaning of § 2.2-2100, in the executive branch of state government to advise the Governor and Cabinet Secretaries on matters related to promotion and development of national service in the Commonwealth and to meet the provisions of the federal National and Community Service Trust Act of 1993.

2015, cc. 26, 452.

§ 2.2-2479. (Expires July 1, 2018) Membership; terms; quorum; meetings
A. The Board shall consist of no more than 20 nonlegislative citizen members, to be appointed by the Governor from the Commonwealth at large. Nonlegislative citizen members appointed to the Board shall be selected for their knowledge of, background in, or experience with the community and volunteer services sector and in accordance with guidelines provided in the National and Community Service Trust Act of 1993. The Governor may appoint additional persons, at his discretion, as nonvoting members.

B. After the initial staggering of terms, nonlegislative citizen members shall be appointed for terms of four years. Appointments to fill vacancies shall be for the unexpired terms. No nonlegislative citizen member shall be eligible to serve more than two successive four-year terms; however, after the expiration of the remainder of a term to which a member was appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto.

C. The voting members of the Board shall elect a chairman and vice-chairman annually from among its membership. A majority of the members of the Board shall constitute a quorum. The Board shall meet no more than six times per year. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request.

2015, cc. 26, 452.

§ 2.2-2480. (Expires July 1, 2018) Compensation; expenses

Members shall receive no compensation for their services. However, all members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department of Social Services in accordance with federal law.

2015, cc. 26, 452.

§ 2.2-2481. (Expires July 1, 2018) Powers and duties of the Board

The Board shall have the power and duty to:

1. Advise the Governor, the Secretaries of Health and Human Resources, Education, and Natural Resources, the Assistant to the Governor for Commonwealth Preparedness, the State Board of Social Services, and other appropriate officials on national and community service programs in Virginia in order to (i) fulfill the responsibilities and duties prescribed by the federal Corporation for National and Community Service and (ii) develop, implement, and evaluate the Virginia State Service Plan, which outlines strategies for supporting and expanding national and community service throughout the Commonwealth.

2. Promote the use of AmeriCorps programs to meet Virginia's most pressing human, educational, environmental, and public safety needs.

3. Collaborate with the Department of Social Services and other public and private entities to recognize and call attention to the significant community service contributions of Virginia citizens and organizations.

4. Assist the Department of Social Services to promote the involvement of faith-based organizations in community and national service efforts.

5. Submit an annual report to the Governor and the General Assembly for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. The chairman of the Board shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Board no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

2015, cc. 26, 452.

§ 2.2-2482. (Expires July 1, 2018) Staffing

The Department of Social Services and any other executive branch agencies as the Governor may designate shall serve as staff to the Board. All agencies of the Commonwealth shall assist the Board upon request.

2015, cc. 26, 452.

§ 2.2-2483. (Expires July 1, 2018) Sunset
This article shall expire on July 1, 2018.

2015, cc. 26, 452.

Article 26 - VIRGINIA GROWTH AND OPPORTUNITY ACT

§ 2.2-2484. Definitions
As used in this article, unless the context requires a different meaning:

"Board" means the Virginia Growth and Opportunity Board.

"Fund" means the Virginia Growth and Opportunity Fund.

"Qualifying region" means a region with a regional council.

"Region" means one or more planning districts or otherwise defined areas designated as a region by the Board for the purpose of administering grants provided pursuant to this article.

"Regional activity" means an economic or workforce development-focused collaborative project or program that is (i) endorsed by a regional council, (ii) consistent with the economic growth and diversification plan developed by the regional council, and (iii) carried out, performed on behalf of, or contracted for by two or more localities, political subdivisions, or public bodies corporate and politic within a region.

"Regional council" means a public body certified by the Board as eligible to receive grants pursuant to this article and that is supported by or affiliated with an existing or newly established organization that engages in collaborative planning or execution of economic or workforce development activities within a region.

2016, cc. 778, 779.

§ 2.2-2485. Virginia Growth and Opportunity Board; membership; terms; compensation
A. The Virginia Growth and Opportunity Board is established as a policy board in the executive branch of state government. The purpose of the Board is to promote collaborative regional economic and workforce development opportunities and activities.

B. The Board shall have a total membership of 24 members that shall consist of seven legislative members, 14 nonlegislative citizen members, and three ex officio members. Members shall be appointed as follows: four members of the House of Delegates, consisting of the Chairman of the House Committee on Appropriations and three members appointed by the Speaker of the House of Delegates; three members of the Senate, consisting of the Chairman of the Senate Committee on Finance and two members appointed by the Senate Committee on Rules; two nonlegislative citizen members to be appointed by the Speaker of the House of Delegates, who shall be from different regions of the Commonwealth and have significant private-sector business experience; two nonlegislative citizen members to be appointed by the Senate Committee on Rules, who shall be from different regions of the Commonwealth and have significant private-sector business

experience; two nonlegislative citizen members to be appointed by the Governor, who shall be from different regions of the Commonwealth and have significant private-sector business experience; and eight nonlegislative citizen members to be appointed by the Governor, subject to the confirmation of the General Assembly, who shall have significant private-sector business experience. Of the Governor's nonlegislative citizen appointments subject to General Assembly confirmation, no more than two appointees may be from any one region of the Commonwealth. The Speaker of the House of Delegates and the Senate Committee on Rules shall submit a list of recommended nonlegislative citizens with significant private-sector business experience for the Governor to consider in making his nonlegislative citizen appointments. The Governor shall also appoint three Secretaries from the following, who shall serve ex officio with voting privileges: the Secretary of Agriculture and Forestry, the Secretary of Commerce and Trade, the Secretary of Education, the Secretary of Finance, and the Secretary of Technology. Nonlegislative citizen members shall be citizens of the Commonwealth.

C. Legislative members and ex officio members of the Board shall serve terms coincident with their terms of office. After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. No House member appointed by the Speaker of the House shall serve more than four consecutive two-year terms, no Senate member appointed by the Senate Committee on Rules shall serve more than two consecutive four-year terms, and no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

D. The Board shall elect a chairman and vice-chairman from among its membership. The chairman shall be a nonlegislative citizen member. A majority of the members shall constitute a quorum.

E. Any decision by the Board shall require an affirmative vote of a majority of the members of the Board.

F. Legislative members of the Board shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive compensation as provided in § 2.2-2813 for the performance of their duties. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

G. Staff support and technical assistance to the Board and the Governor in carrying out the provisions of this article shall be provided by the agencies of the Secretariats of Commerce and Trade, Education, and Finance.

2016, cc. 778, 779.

§ 2.2-2486. Powers and duties of the Board

A. The Board shall have the power and duty to:

1. Designate regions for the purpose of administering this article;

2. Certify qualifying regions and regional councils, including developing and implementing guidelines or procedures for such certification;

3. Develop and implement guidelines and procedures for the application for and use of any moneys in the Fund;

4. Receive and assess applications for awards from the Fund submitted by regional councils and determine the distribution, duration, and termination of awards from the Fund for uses identified in such applications;

5. Advise the Governor on the allocation and prioritization of other funds available within the executive branch that may be used to promote economic and workforce development on a regional basis;

6. Advise the Governor on the provision of technical assistance regarding the organization and operation of regional councils, the preparation of applications for Fund awards, and the development, validation, and assessment of regional economic growth and diversification plans and regional activities that receive grants from the Fund;

7. Provide for the collection and dissemination of information concerning local, state, national, and other best practices related to collaborative regional economic and workforce development initiatives that focus on private-sector growth and opportunity;

8. Designate advisory committees with expertise in the industries or clusters around which grant requests are proposed to assist in carrying out the Board's duties;

9. Seek independent analytical assistance from outside consultants, including post-grant assessments and reviews to evaluate the results and outcomes of grants awarded pursuant to this article;

10. Enter into contracts to provide services to regional councils to assist with prioritization, analysis, planning, and implementation of regional activities;

11. Submit to the Governor and the General Assembly an annual report for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. The chairman shall submit to the Governor and the General Assembly an annual executive summary of the interim activity and work of the Board no later than December 1. The executive summary shall be submitted for publication as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website; and

12. Perform such other activities and functions as the Governor and General Assembly may direct.

B. The development of guidelines and procedures to implement the provisions of this article shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

2016, cc. 778, 779.

§ 2.2-2487. Virginia Growth and Opportunity Fund

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Growth and Opportunity Fund. The Fund shall be established on the books of the Comptroller. All moneys appropriated by the General Assembly for the Fund, and from any other sources, public or private, shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, included interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the chairman of the Board.

B. Moneys in the Fund shall be used to facilitate regional collaboration on economic growth and diversification. Specifically, the Fund shall be used to incentivize and encourage cooperation among business, education, and government on regional strategic economic development and workforce development efforts. Available moneys in the Fund shall be allocated as follows:

1. A portion of the Fund may be used to support the initial organizational efforts of each regional council, such as capacity-building activities, project prioritization, and studies and analyses related to the development of an economic growth and diversification plan for the region, including identification of existing and prospective gaps in education and skills within the region;

2. A portion shall be reserved for specific projects in each region on the basis of a region's share of state population, based on population estimates made by the Weldon Cooper Center for Public Service at the University of Virginia. However, the Board may cancel such reservation in whole or in part if, in the Board's judgment, the region has failed to establish a certified regional council or to otherwise meet the qualifications for grant funding in accordance with this article; and

3. A portion shall be competitively awarded on the basis of expected economic impact and outcomes without regard to a region's population.

Except for initial grants awarded pursuant to subdivision 1, no more than eight percent of any grants from the Fund to a single regional council shall be used for administrative or planning purposes.

C. Public comment shall be received by the Board when making decisions regarding awards from the Fund.

D. No more than 90 percent of moneys in the Fund shall be awarded or allocated in any fiscal year.

2016, cc. 778, 779.

§ 2.2-2488. Formation of regional councils

A. A regional council may be established in each region identified by the Board. Regional councils shall solicit, review, and recommend regional activity projects to the Board in accordance with this article.

B. When there is no certified regional council in existence in a region, the Board may provide for the formation of a regional council by designating a formation committee chairman and two members from the region. The formation committee chairman shall be a nonlegislative citizen member of the Board, and the chairman may designate up to two additional members of the formation committee. The formation committee shall be responsible for such consultation and recruitment within the region as is likely to result in certification of a regional council for the region. The formation committee chairman and members may serve as officers and members of the regional council.

C. A regional council shall include representatives from (i) the education sector, including school divisions, community colleges, and public institutions of higher education; (ii) the economic and workforce development sector; (iii) local government; (iv) planning district commissions; (v) nonprofit organizations; and (vi) other entities that significantly affect regional economic or workforce development. Membership may include one or more nonlegislative citizen members of the Board from the region. A majority of the members of a regional council shall be from the private sector with demonstrated significant private-sector business experience. A regional council shall be chaired by a citizen member from the region with significant private-sector business experience.

D. The Board shall certify that the regional council member selection process, membership, governance, structure, composition, and leadership meet the requirements of this article and the program guidelines and procedures. The Board shall certify that the regional council has adopted bylaws and taken other such steps in its organizational activities and business plan as are necessary or required by Board guidelines and procedures to provide for accountability for and oversight of regional activities funded from the Fund.

E. Public comment shall be received by the Board when certifying a regional council.

2016, cc. 778, 779.

§ 2.2-2489. Award of grants to regional councils

A. The Board shall establish guidelines, procedures, and objective criteria for the award and distribution of grants from the Fund to regional councils.

B. In order to qualify to receive grants from the Fund, a regional council shall develop an economic growth and diversification plan to (i) promote private-sector growth and opportunity in the region; (ii) identify issues of economic competitiveness for the region, including gaps in education and skills required to meet existing and prospective employer needs within the region; and (iii) outline steps that the collaborating business, education, and government entities in the region will pursue to expand economic opportunity, diversify the economy, and align workforce development activities with the education and skills needed by employers in the region. A regional

council shall review such plan not less than biennially while the regional council is receiving grants from the Fund.

C. The Board shall only consider those regional activities endorsed by a regional council in its application for grants from the Fund. For any regional activity included in a regional council's application, the regional council shall identify (i) the amount of grants requested and the number of years for which grants are sought; (ii) the participating business, education, and government entities and their respective roles and contributions; (iii) the private, local, and other sources of nonstate funding that the grant from the Fund will assist in generating, including specific amounts pledged by such sources as of the application date; (iv) how the regional activity addresses the skills gaps identified in the council's economic growth and diversification plan; and (v) the economic impact or other outcomes that are reasonably expected to result from the proposed regional activity, including timetables and means of measurement.

D. Regional activities eligible for grants from the Fund shall be focused on high-impact, collaborative projects in a region that promote new job creation, entrepreneurship, and new capital investment; leverage nonstate resources to enhance collaboration; foster research, development, and commercialization activities; encourage cooperation among public bodies to reduce costs and duplication of government services; and promote other economic or workforce development activities consistent with this article that are authorized by the Board. The Board shall give initial priority to grant proposals that promote workforce development and other activities focused on eliminating skills gaps identified in a region's economic growth and diversification plan.

E. In determining a regional council's eligibility to receive grants from the Fund, and the amount of such grants, the Board shall review and score the proposed regional activities. Scores shall be assigned on the basis of predetermined criteria established by the Board in its guidelines and procedures based on the following factors:

1. The expected economic impact or outcome of the activity, with particular emphasis on goals identified in the regional council's plan for economic growth and diversification;

2. The fiscal resources from non-Fund sources that will be committed to the activity, including local or federal funds, private contributions, and cost savings expected to be achieved through regional collaboration;

3. The number and percentage of localities, including political subdivisions and bodies corporate and politic, within the region that are participating in the activity, the portion of the region's population represented by the participating localities, and the participation of localities that are outside of the applicant region;

4. The compatibility with other projects, programs, or existing infrastructure in a region to maximize the leverage of grants from the Fund to encourage new collaborative activities;

5. The expected economic impact and outcomes of the project and the complexity of the project relative to the size of the economy of the region or to the population of the participating localities;

6. The projected cost savings and other efficiencies generated by the proposed activity, and the local resources generated by collaboration that have been or will be repurposed to support the activity;

7. The character of the regional collaboration, including the nature and extent of the regional effort involved in developing and implementing the proposed activity, the complexity of the activity, the prospective impact on relations between and among the affected localities, and the prospective impact on collaboration between and among business, education, and government entities in the region;

8. Interstate, inter-regional, and other beneficial forms of collaboration, if any, that will accompany, result from, or be encouraged by the activity;

9. Efficiency in the administration and oversight of regional activities; and

10. Other factors deemed to be appropriate by the Board.

F. Each regional council awarded a grant from the Fund shall issue an annual report that shall include, at a minimum, an assessment of the impact and outcomes from regional activities supported by grants from the Fund and the region's overall progress in addressing the goals and strategies identified in the region's plan for economic growth and diversification. Such assessment shall address performance criteria prescribed in the program guidelines and procedures.

G. Subject to the provisions of § 2.2-2488 and this section, once a regional council becomes eligible for grants from the Fund, the regional council may continue to apply for and receive grants from the Fund to support economic activities consistent with the regional council's economic growth and diversification plan in such amounts and for such duration as the Board may determine in accordance with its guidelines and procedures. The Board may terminate any payments to regional councils that fail to perform in accordance with this article, the Board's guidelines or procedures, or any conditions expressly agreed upon as part of a grant award, or for malfeasance. The Board may require the refund of moneys from the Fund upon such termination. Grants that are terminated shall revert to the Fund for distribution on an unallocated competitive basis.

H. In making Fund recommendations and awards, the Board may consider regional activities that commenced prior to the enactment of this article, provided that the grant-funded program or project will expand the scope of, or increase the number of localities participating in, such preexisting activity.

I. No regional council may have outstanding grant commitments of more than 25 percent of the total amount appropriated to the Fund.

J. The year for grant payments shall be the Commonwealth's fiscal year following the calendar year in which the region qualifies, with payments made annually by the Comptroller upon certification by the Board. Grant amounts shall be made at the sole discretion of the Board.

K. Any grant awarded from the Fund to a regional council shall require matching funds at least equal to the grant, provided, however, that the Board shall have the authority to reduce the match requirement to no less than half of the grant upon a finding by the Board of fiscal distress or an exceptional economic opportunity in a region. Such matching funds may be from local, regional, federal, or private funds, but shall not include any state general or nongeneral funds, from whatever source.

L. Decisions of the Board shall be final and not subject to review or appeal.

2016, cc. 778, 779.

§ 2.2-2490. Annual audit

The accounts of the Board shall be audited annually by the Auditor of Public Accounts or his legally authorized representatives. Copies of the annual audit shall be distributed to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.

2016, cc. 778, 779.

Chapter 25 - COMMISSIONS

Article 1 - SOUTHSIDE VIRGINIA BUSINESS AND EDUCATION COMMISSION

§§ 2.2-2500 through 2.2-2502. Repealed

Repealed by Acts 2003, c. 349.

Article 2 - SPECIAL ADVISORY COMMISSION ON MANDATED HEALTH INSURANCE BENEFITS

§§ 2.2-2503 through 2.2-2505. Repealed

Repealed by Acts 2013, c. 709, cl. 2.

Article 3 - VIRGINIA ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

§§ 2.2-2506, 2.2-2507. Repealed

Repealed by Acts 2004, cc. 34, 155.

Article 4 - VIRGINIA COMMISSION FOR THE ARTS

§ 2.2-2508. (Repealed effective October 1, 2016) Virginia Commission for the Arts; official agency to receive and disburse funds from National Foundation on the Arts; membership; terms; compensation

A. The Virginia Commission for the Arts (the "Commission") is established as an advisory commission within the meaning of § 2.2-2100, in the executive branch of state government.

B. The Commission is designated the official agency of the Commonwealth to receive and disburse any funds made available to the Commonwealth by the National Foundation on the Arts.

C. The Commission shall consist of thirteen members appointed by the Governor subject to confirmation by the General Assembly. No employee of the Commonwealth or member of the General Assembly shall be eligible for appointment as a member of the Commission. At least one member, but no more than two members, shall be appointed from each Congressional district in the Commonwealth.

D. Except for initial appointments, each member shall serve a five-years term; provided that no member of the Commission who serves a full five-year term shall be eligible for appointment during the five-year period following the expiration of his term. All vacancies shall be filled for the balance of the unexpired term in the same manner as original appointments.

E. The Commission shall designate one of its members as chairman. A majority of the members of the Commission shall constitute a quorum.

F. The members of the Commission shall not receive any compensation for their services, but shall be reimbursed for the reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825.

1968, c. 567, §§ 9-84.01:1, 9-84.02, 9-84.03; 1979, c. 314; 2001, c. 844.

§ 2.2-2509. (Repealed effective October 1, 2016) Duties of the Commission

A. The Commission shall perform among others the following duties:

1. Stimulate and encourage throughout the Commonwealth growth in artistic quality and excellence, public interest and participation in the arts, and access to high quality and affordable art for all Virginians;

2. Make recommendations concerning appropriate methods to encourage economic viability, an intellectually stimulating environment for artists, and participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the Commonwealth;

3. Promote the development and implementation of a planned, sequential, and comprehensive program of arts education, taught by licensed teachers endorsed in arts education, in the public elementary and secondary schools of the Commonwealth;

4. Provide supplemental learning opportunities to the public school arts education curriculum;

5. Encourage the development of a network of professional arts organizations, the media, and arts promoters, including, but not limited to, the literary, visual, and performing arts for the production of classical and new works of art, and diversity in artistic expressions;

6. Provide funding for and technical assistance to artists, recognized nonprofit arts organizations, and arts organizations and activities which celebrate and preserve the various cultures represented among the citizens of the Commonwealth;

7. Encourage and support the creation of new works of art, arts organizations whose primary objective is to increase public access to the arts, particularly in underserved areas, and performing arts tours to increase the availability of this form of artistic expression throughout the Commonwealth;

8. Establish a program of financial assistance to provide scholarships, grants, and other awards to artists who demonstrate exceptional ability and talent;

9. Establish an advisory panel composed of artists, art administrators, and citizens to advise the Commission concerning fiscal matters;

10. Encourage arts organizations to dedicate to endowment at least one dollar of the price of each adult admission to performances or exhibitions or at least one percent of moneys collected in fund campaigns;

11. Encourage arts organizations to develop and implement endowment enlargement plans which yield enough income to underwrite one-third of the organizations' annual operating costs;

12. Apply to any appropriate agency or officer of the United States for participation in or receipt of aid from any federal program respecting the arts, and, in respect thereto, enter into contracts and agreements with the United States or any appropriate agency thereof;

13. Provide incentives to local governments to encourage public support and funding of the arts;

14. Accept gifts, contributions and bequests of money or any other thing to be used for carrying out the purposes of this article;

15. Develop specific procedures for the administration and implementation of a program, so long as any such program is for the benefit of a nonprofit organization, qualifying as a § 501 (c) (3) organization under the Internal Revenue Code, whereby interest earned on endowment funds donated to stimulate and encourage public interest and enjoyment of music and the performing arts may be matched by state funds appropriated for this program, and prepare written guidelines to govern such program; and

16. Administer any funds available to the Commission and disburse such funds in accordance with the purposes of this article. In allocating funds to be disbursed to arts organizations, the Commission shall give preferential consideration to arts organizations actively implementing an endowment enlargement plan, either individually or as members of a regional consortium of arts organizations.

B. Nothing in this article shall be construed to affect the statutory purposes of the Virginia Museum of Fine Arts.

1968, c. 567, §§ 9-84.03, 9-84.06; 1979, c. 314; 1989, c. 331; 1992, cc. 218, 432; 1996, c. 161; 2001, c. 844.

§ 2.2-2510. (Repealed effective October 1, 2016) Agency supervision; employment of personnel; budget preparation

The Governor may appoint a Director who shall serve at his pleasure. The Director may employ the personnel required to assist the Commission in the exercise and performance of its powers and duties. The Director shall supervise and manage such personnel and shall prepare, approve and submit all requests for appropriations, and be responsible for all expenditures pursuant to appropriations.

1970, c. 334, § 9-84.07; 1984, c. 444; 1985, c. 397; 2001, c. 844.

Article 5 - COMMISSIONERS FOR PROMOTION OF UNIFORMITY OF LEGISLATION

§§ 2.2-2511, 2.2-2512. Repealed

Repealed by Acts 2002, c. 491, effective April 5, 2002.

Article 6 - VIRGINIA RESEARCH AND TECHNOLOGY ADVISORY COMMISSION

§§ 2.2-2513 through 2.2-2517. Repealed

Repealed by Acts 2009, cc. 325 and 810, cl. 2.

Article 7 - VIRGINIA COMMISSION ON HIGHER EDUCATION BOARD APPOINTMENTS

§ 2.2-2518. The Virginia Commission on Higher Education Board Appointments; purpose

The Virginia Commission on Higher Education Board Appointments, (the Commission) is established as an advisory commission in the executive branch of state government.

The purpose of the Commission shall be to review and evaluate potential appointees to the governing bodies of Virginia's public institutions of higher education, the State Board for Community Colleges, and the State Council of Higher Education for Virginia, and to make recommendations to the Governor.

2005, cc. 933, 945.

§ 2.2-2519. Membership; quorum

The Commission shall have a total membership of eight members that shall consist of six nonlegislative citizen members and two ex officio members. Nonlegislative citizen members shall be appointed by the Governor as follows: two who shall be former members of either the board of visitors of a public institution of higher education or the State Board for Community Colleges; one who shall be either a former president, provost, or executive vice-president of a public institution of higher education; one who shall be a faculty member of a public institution of higher education;

and two who shall be citizens at large. The Secretary of Education or his designee and the Secretary of the Commonwealth or his designee shall serve as ex officio members of the Commission with nonvoting privileges. The nonlegislative citizen member appointed who is a faculty member of a public institution of higher education shall serve without voting privileges. Nonlegislative citizen members of the Commission shall be citizens of the Commonwealth. Three voting members of the Commission shall constitute a quorum.

Nonlegislative citizen members shall serve at the pleasure of the Governor, and ex officio members of the Commission shall serve terms coincident with their terms of office.

2005, cc. 933, 945; 2014, c. 816.

§ 2.2-2520. Compensation; expenses

Members of the Commission shall serve without compensation. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the expenses of the members shall be provided by the Office of the Secretary of the Commonwealth.

2005, cc. 933, 945.

§ 2.2-2521. Powers and duties of the Commission

The Commission shall have the following powers and duties:

1. Develop and implement a process for evaluating potential appointees to higher education governing boards, based on substantive qualifications, including merit and experience.

2. Make recommendations to the Governor at least 30 days prior to the expiration of terms for which recommendations have been requested to fill vacancies on higher education governing boards.

2005, cc. 933, 945.

§ 2.2-2522. Staffing

The Office of the Secretary of the Commonwealth shall serve as staff to the Commission, and shall provide to the members copies of resumes and correspondence it receives related to appointments to higher education governing boards. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

2005, cc. 933, 945.

§ 2.2-2523. Repealed

Repealed by Acts 2008, cc. 50 and 710, cl. 1.

Article 7.1 - COMMUNITY INTEGRATION ADVISORY COMMISSION

§ 2.2-2524. (Expires July 1, 2019) The Community Integration Advisory Commission; purpose

The Community Integration Advisory Commission (the Commission) is established as an advisory commission in the executive branch of state government. The purpose of the Commission shall be to monitor the progress of all executive branch state agencies toward community integration of Virginians with disabilities in accordance with all applicable state and federal laws in order that persons with disabilities may enjoy the benefits of society and the freedoms of daily living.

2006, c. 894.

§ 2.2-2525. (Expires July 1, 2019) Membership; terms; quorum; meetings

The Commission shall have a total membership of 21 nonlegislative citizen members to be appointed as follows: four nonlegislative citizen members, of whom two shall be persons with disabilities, one shall be the relative of a citizen of the Commonwealth with a disability, and one shall be a provider of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Senate Committee on Rules; six nonlegislative citizen members, of whom three shall be persons with disabilities, one shall be the relative of a citizen of the Commonwealth with a disability, and two shall be providers of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Speaker of the House of Delegates; and 11 nonlegislative citizen members, of whom three shall be persons with disabilities, one shall be an individual who is receiving or has received services in a state hospital operated by the Department of Behavioral Health and Developmental Services, one shall be an individual who is receiving or has received services in a state or private intermediate care facility for individuals with intellectual disability, one shall be a current or former resident of a nursing facility, two shall be the relatives of citizens of the Commonwealth with disabilities, and three shall be providers of services to citizens of the Commonwealth with disabilities or an advocate for persons with disabilities or for services to such persons to be appointed by the Governor. Nonlegislative citizen members of the Commission shall be citizens of the Commonwealth.

Nonlegislative citizen members shall serve a term of four years; however, no nonlegislative citizen member shall serve more than two consecutive four-year terms. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

The Commission shall elect a chairman and vice-chairman from among its membership. A majority of the members shall constitute a quorum. The Commission shall meet not less than four times each year. The meetings of the Commission shall be held at the call of the chairman or whenever the majority of the members so request.

2006, c. 894; 2012, cc. 476, 507; 2015, c. 533.

§ 2.2-2526. (Expires July 1, 2019) Compensation; expenses

Members shall serve without compensation. However, all members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of expenses of the members shall be provided by such executive branch agencies as the Governor designates.

2006, c. 894.

§ 2.2-2527. (Expires July 1, 2019) Powers and duties of the Commission
The Commission shall have the following powers and duties:

1. To monitor the implementation of state and federal laws pertaining to community integration of Virginians with disabilities; and

2. To make appropriate recommendations to the Governor concerning community integration of Virginians with disabilities.

2006, c. 894.

§ 2.2-2528. (Expires July 1, 2019) Staffing
The Department for Aging and Rehabilitative Services, and such other executive branch agencies as the Governor may designate, shall provide staff support to the Commission. All agencies of the Commonwealth shall provide assistance to the Commission, upon request.

2006, c. 894; 2010, c. 342; 2012, cc. 803, 835.

§ 2.2-2529. (Expires July 1, 2019) Sunset
This article shall expire on July 1, 2019.

2006, c. 894; 2009, c. 548; 2010, c. 342; 2013, cc. 152, 245; 2015, c. 533.

Article 8 - VIRGINIA COMMISSION ON IMMIGRATION

§§ 2.2-2530, 2.2-2531. Expired
Expired.

Article 9 - SOUTHWEST VIRGINIA CULTURAL HERITAGE COMMISSION

§§ 2.2-2532 through 2.2-2536. Expired
Expired.

Chapter 26 - COUNCILS

Article 1 - ADVISORY COUNCIL ON THE VIRGINIA BUSINESS-EDUCATION PROGRAM

§§ 2.2-2600 through 2.2-2602. Repealed
Repealed by 2004, c. 37.

Article 2 - BLUE RIDGE ECONOMIC DEVELOPMENT ADVISORY COUNCIL

§§ 2.2-2603, 2.2-2604. Repealed

Repealed by Acts 2003, c. 348.

Article 3 - BLUE RIDGE REGIONAL EDUCATION AND TRAINING COUNCIL

§§ 2.2-2605 through 2.2-2608. Repealed

Repealed by Acts 2003, c. 210, cl. 1, effective July 1, 2004.

Article 4 - BLUE RIDGE REGIONAL TOURISM COUNCIL

§ 2.2-2609. Blue Ridge Regional Tourism Council; membership; meetings; Blue Ridge defined

A. The Blue Ridge Regional Tourism Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The Council shall be composed of one representative of each of the destination marketing organizations (DMOs) located in the Blue Ridge region and the President of the Virginia Tourism Authority.

B. The Council shall elect a chairman and a vice-chairman from among its members. The Council shall meet at least four times a year at such dates and times as they determine.

C. For the purposes of this article, the "Blue Ridge" region shall include the Counties of Alleghany, Amherst, Appomattox, Augusta, Bath, Bedford, Bland, Botetourt, Campbell, Craig, Floyd, Franklin, Giles, Highland, Montgomery, Nelson, Pulaski, Roanoke, Rockbridge, and Wythe and the Cities of Buena Vista, Covington, Lexington, Lynchburg, Radford, Roanoke, Salem, Staunton, and Waynesboro.

1993, c. 330, §§ 9-145.39:1, 9-145.39:2; 1996, cc. 590, 598; 2001, c. 844; 2006, c. 861; 2016, cc. 164, 312.

§ 2.2-2610. Duties of the Council; acceptance of gifts and grants

A. The Council shall perform the following functions:

1. Assist localities in the region, as well as the General Assembly, with the problems, concerns and issues of the tourism industry in the Blue Ridge region;

2. Encourage a cooperative attitude among the localities of the region and assist in the establishment of successful tourism partnerships between private and public organizations;

3. Develop and assist in the implementation of a plan to increase tourism revenue within the Blue Ridge region;

4. Review and disseminate information to the localities in this region concerning statewide and national tourism associations;

5. Encourage localities in the region to participate in the Virginia Local Tourism Accreditation Program; and

6. Encourage localities to invest in tourism development as an integral part of their overall economic development.

B. The Council may apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives.

1993, c. 330, §§ 9-145.39:3, 9-145.39:4; 2001, c. 844.

Article 5 - CAPITOL SQUARE PRESERVATION COUNCIL

§§ 2.2-2611 through 2.2-2613. Repealed

Repealed by Acts 2002, c. 491, effective April 5, 2002.

Article 6 - CITIZENS' ADVISORY COUNCIL ON FURNISHING AND INTERPRETING THE EXECUTIVE MANSION

§ 2.2-2614. Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion; purpose as a nonprofit charitable organization; membership; terms; officers and executive groups; compensation

A. The Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion (the Council) is established as an advisory council in the executive branch of state government to operate as a nonprofit charitable organization. No part of the Council's net earnings shall inure to the benefit of any private individual nor shall it carry on propaganda or otherwise attempt to influence legislation or participate in any political campaign on behalf of any candidate for public office.

B. The Council shall not exceed 30 members, who shall be appointed by the Governor. No employee of the Commonwealth or member of the General Assembly shall be eligible for appointment as a member of the Council. All members shall be deemed members-at-large charged with the responsibility of serving the best interests of the whole Commonwealth and no member shall act as representative of any particular region or of any particular agency or activity.

C. All appointments shall be for five-year terms. No member of the Council who serves a full five-year term shall be eligible for reappointment, provided that one year after the termination of his appointment, a member shall be eligible for reappointment. All vacancies shall be filled for the unexpired term in the same manner as the original appointments.

D. The spouse of the Governor, if any, shall be the honorary chairperson of the Council. The Governor shall designate one member of the Council to serve as chairman of an executive group, such executive group to be determined by the Council, and to be composed of members of the Council. Other advisory and cooperative groups may be appointed by the chairman. After the chairman has served three years, the Council thereafter shall elect its chairman.

E. Members of the Council shall not receive any compensation or reimbursement of expenses for their services.

1973, c. 431, §§ 9-84.5, 9-84.6; 1985, c. 448; 2001, c. 844; 2013, c. 439.

§ 2.2-2615. Powers and duties of Council; compensation for consultants

A. The Council shall have the following powers and duties:

1. Promote a greater understanding and awareness of the history and significance of the Executive Mansion;

2. Take the leadership in guiding the development of research and publications on the history of the Executive Mansion, thus establishing a continuity of effort in this area;

3. Encourage, approve, and accept contributions and bequests and gifts or loans of furniture, works of art, memorabilia, and other property for its use in carrying out the purposes of this article;

4. Purchase appropriate period furnishings and works of art for the Executive Mansion, and exchange or sell property, tangible or intangible, which has been acquired by the Council through gifts or otherwise from the Commonwealth or other public or private organizations, associations, or individuals;

5. Acquire or provide for accession and replacement of objects for the Executive Mansion, either directly or through the Virginia Museum of Fine Arts;

6. Administer all funds, public and private, made available to the Council and to disburse such funds in accordance with the purposes of this article.

B. The Council may employ and fix the compensation of researchers, writers, curators, and other such consultants and professional personnel as it may deem necessary to assist in the exercise and performance of its duties and powers.

C. Purchases, exchanges, gifts and sales by the Council shall be exempt from the requirements of the Virginia Public Procurement Act. The Mansion Director and/or the Department of General Services shall assist the Council in keeping record of all such transactions.

1973, c. 431, §§ 9-84.7, 9-45.8; 2001, cc. 392, 409, 844.

§ 2.2-2616. Disposition of moneys and property received

All moneys received by the Council shall be paid into the state treasury and segregated as a special fund to be used by the Council to carry out the purposes of this article. All other property, tangible or intangible, which is acquired by the Council shall become the property of the Commonwealth upon such acquisition. Such other intangible property may be held in the name of a nominee to facilitate its sale or exchange by the Council, and such other tangible property may be sold or exchanged by the Council as agent for the Commonwealth notwithstanding any other provision of law concerning the sale or exchange of property of the Commonwealth.

1973, c. 431, § 9-84.10; 2001, c. 844.

Article 7 - COMMONWEALTH ATTORNEYS SERVICES COUNCIL

§ 2.2-2617. Commonwealth Attorneys Services Council; purpose; membership terms; compensation

A. The Commonwealth Attorneys Services Council is established as a supervisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council shall be to ensure the upgrading of criminal justice administration by providing and coordinating training, education and services for attorneys for the Commonwealth, there is created in the executive branch the Commonwealth's Attorneys' Services Council that shall be under the direction and control of the Governor.

B. The Council shall consist of not more than sixteen members, as follows: one attorney for the Commonwealth for each congressional district in the Commonwealth to be elected as provided in subsection C; the president, the president-elect, the vice-president and the secretary-treasurer of the Virginia Association of Commonwealth's Attorneys, and the immediate past president of the Virginia Association of Commonwealth's Attorneys. The president of the Association shall be the chairman of the Council; the president-elect and vice-president shall be first and second vice-chairmen, respectively, and the secretary-treasurer shall serve as secretary of the Council.

C. The initial terms of the members elected from congressional districts shall be as follows: for the members from the odd-numbered districts, until July 1 of the next following even-numbered year after their election; for the members from the even-numbered districts, until July 1 of the next following odd-numbered year after the election; thereafter, all terms shall be for two years.

The election for members shall be held annually at the annual meeting of the Virginia Association of Commonwealth's Attorneys. One member shall be elected initially, and every two years thereafter, from each of the several congressional districts by the membership of the Association at large. Each such member shall be an attorney for the Commonwealth holding office within his congressional district.

D. Upon the termination of the office of any member as attorney for the Commonwealth, his membership on the Council shall be terminated. Vacancies shall be filled for the congressional district in which the former member resided for the unexpired term by a majority vote of the Council. Members shall be eligible for more than one term.

E. The Council shall establish its own bylaws, procedures and requirements with respect to quorum, place and conduct of its meetings and its other business matters, provided, that such bylaws shall include a provision that the Council hold no less than ten meetings a year, and that other meetings be held when called by the chairman, or, in the absence of the chairman, the first vice-chairman, or upon the written request of four members.

F. Members of the Council shall receive no salaries but shall be reimbursed their reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825.

1978, c. 455, §§ 2.1-64.28:1, 2.1-64.28:2; 1984, c. 720; 1992, c. 81; 2001, c. 844.

§ 2.2-2618. Powers and duties of Council

The Council, in order to (i) strengthen the criminal justice system in the Commonwealth; (ii) provide a professional organization for the education, training, service and coordination of technical efforts of state prosecutors; and (iii) maintain and improve prosecutor efficiency and effectiveness in enforcing the law of the Commonwealth, shall have, but are not limited to, the following powers and duties:

1. Organize, supervise and perform functions consistent with this article;

2. Coordinate training and continuing legal education activities for attorneys for the Commonwealth;

3. Contract or enter into agreements with state or federal agencies or education institutions;

4. Gather and disseminate information to attorneys for the Commonwealth relative to their official duties, including changes in the law affecting their office and information on individuals identified as criminal gang members, as transmitted by the Department of Corrections and the Department of Juvenile Justice;

5. Coordinate with the Department of Criminal Justice Services and the Judicial Conference in reference to training and interdisciplinary criminal justice matters;

6. Obtain statistical reports from attorneys for the Commonwealth relating to their performance, function and work-load;

7. Receive and establish an equitable distribution plan for the allocation of any funds from public or private sources;

8. Maintain close contact with the office of the Attorney General and with all attorneys for the Commonwealth and assistant attorneys for the Commonwealth in the discussion of problems or recommendations concerning necessary research, minimum standards, educational needs and other matters relative to upgrading the professional status of attorneys for the Commonwealth;

9. Gather information on changes in the law that affect the duties and responsibilities of law-enforcement officers, make such information available to law-enforcement agencies, law-enforcement training academies, and the Department of Criminal Justice Services; and

10. Perform such other acts as may be necessary for the effective performance of its duties.

1978, c. 455, § 2.1-64.28:4; 1984, c. 779; 2001, c. 844; 2006, cc. 431, 500; 2013, c. 79.

§ 2.2-2619. Administrator

The Council, with the concurrence of the Governor, shall appoint an administrator, who shall serve under the supervision and at the pleasure of the Council. He shall perform the duties and exercise the functions the Council assigns to him. He shall receive a salary for his services to be paid by the Council subject to the approval of the Governor.

1978, c. 455, § 2.1-64.28:3; 1984, c. 720; 1992, c. 81; 2001, c. 844.

§ 2.2-2619.1. Commonwealth's Attorneys Training Fund established; administration

A. There is hereby created in the state treasury a special nonreverting revolving fund to be known as the Commonwealth's Attorneys Training Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller.

B. The Fund shall consist of all proceeds distributed to the Commonwealth's Attorneys' Services Council in January 2014 as a result of the federal equitable sharing distribution following the settlement of United States v. Abbott Laboratories, Case No. 1:12-CR-00026 (W.D Va.)(Settlement). The Fund shall also consist of any moneys appropriated from the general fund, grants and donations received by the Council, and other moneys received by the State Treasurer and designated for deposit in the Fund. Interest and other income earned on the Fund shall be credited to the Fund. Any moneys remaining in the Fund, including interest and other income thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

C. Notwithstanding any other provision of law, the moneys and other property comprising the Fund shall be invested, reinvested, and managed by the Board of the Virginia Retirement System as provided in § 51.1-124.37. The State Treasurer shall not be held liable for losses suffered by the Virginia Retirement System on investments made under the authority of this section.

D. The Fund shall be expended solely for the purpose of supporting prosecutor training and, as appropriate, law-enforcement training and associated costs approved by the Council and any other purpose permitted by this article that is consistent with the Settlement described in subsection B.

E. An amount not to exceed six percent of the moving average of the market value of the Fund calculated over the previous five years or since inception, whichever is shorter, on a one-year delayed basis, net of any administrative fee assessed pursuant to subsection E of § 51.1-124.37, may be expended in a calendar year for any purpose permitted by this article. The Council shall not be required to expend such amount in a calendar year, and any amount up to such six percent that is not expended in a calendar year may be expended in any other calendar year.

F. The disbursement of moneys from the Fund shall be made by the State Comptroller at the written request of the Council.

2015, cc. 212, 226.

Article 8 - COMMONWEALTH COMPETITION COUNCIL

§§ 2.2-2620 through 2.2-2625. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 2.

Article 9 - COMMONWEALTH COUNCIL ON AGING

§§ 2.2-2626, 2.2-2627. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 60.

Article 10 - COUNCIL ON INDIANS

§§ 2.2-2628 through 2.2-2629.2. Repealed

Repealed by Acts 2012, cc. 803 and 835, cl. 97.

Article 11 - COUNCIL ON WOMEN

§ 2.2-2630. Council on Women; purpose; membership; terms; chairman

A. The Council on Women (the "Council") is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council shall be to identify ways in which women can reach their potential and make their full contribution to society and this Commonwealth as wage earners and citizens.

B. The Council shall consist of 18 members from the Commonwealth at large and one of the Governor's Secretaries as defined in § 2.2-200, ex officio with full voting privileges, all to be appointed by the Governor. Appointments shall be for terms of three years, except appointments to fill vacancies, which shall be for the unexpired terms. The ex officio member shall serve a term coincident with his term of office. A majority of the membership of the Council shall constitute a quorum.

C. The Governor shall appoint the chairman of the Council.

1970, c. 685, § 9-116; 1972, c. 632; 1985, cc. 448, 497; 1991, c. 563; 2001, c. 844; 2012, c. 502.

§ 2.2-2631. Powers and duties of Council

The Council shall have the following powers and duties to:

1. Determine the studies and research to be conducted by the Council;

2. Collect and disseminate information regarding the status of women in the Commonwealth and the nation;

3. Advise the Governor, General Assembly and the Governor's Secretaries on matters pertaining to women in the Commonwealth and the nation;

4. Establish and award scholarships pursuant to regulations and conditions prescribed by the Council;

5. Review and comment on all budgets, appropriation requests and grant applications concerning the Council, prior to their submission to the Secretary of Health and Human Resources or the Governor; and

6. Develop programs and projects on matters pertaining to women in the Commonwealth and the nation through public-private partnerships.

1985, c. 497, § 9-116.1; 2001, c. 844; 2012, c. 502.

Article 12 - HUMAN RIGHTS COUNCIL

§§ 2.2-2632 through 2.2-2639. Repealed
Repealed by Acts 2012, cc. 803 and 835, cl. 14.

Article 13 - INTERAGENCY COORDINATING COUNCIL ON HOUSING FOR THE DISABLED

§§ 2.2-2640, 2.2-2641. Repealed
Repealed by Acts 2004, cc. 16, 153.

Article 14 - MATERNAL AND CHILD HEALTH COUNCIL

§§ 2.2-2642, 2.2-2643. Repealed
Repealed by Acts 2003, c. 451.

Article 15 - SPECIALIZED TRANSPORTATION COUNCIL

§§ 2.2-2644 through 2.2-2647. Repealed
Repealed by Acts 2003, c. 454.

Article 16 - STATE EXECUTIVE COUNCIL FOR CHILDREN'S SERVICES

§ 2.2-2648. State Executive Council for Children's Services; membership; meetings; powers and duties
A. The State Executive Council for Children's Services (the Council) is established as a supervisory council, within the meaning of § 2.2-2100, in the executive branch of state government.

B. The Council shall consist of one member of the House of Delegates to be appointed by the Speaker of the House and one member of the Senate to be appointed by the Senate Committee on Rules; the Commissioners of Health, of Behavioral Health and Developmental Services, and of Social Services; the Superintendent of Public Instruction; the Executive Secretary of the Virginia Supreme Court; the Director of the Department of Juvenile Justice; the Director of the Department of Medical Assistance Services; a juvenile and domestic relations district court judge, to be appointed by the Governor and serve as an ex officio nonvoting member; the chairman of the state and local advisory team established in § 2.2-5201; five local government representatives chosen from members of a county board of supervisors or a city council and a county administrator or city manager, to be appointed by the Governor; two private provider representatives from facilities that maintain membership in an association of providers for children's or family services and receives funding as authorized by the Children's Services Act (§ 2.2-5200 et seq.), to be appointed by the Governor, who may appoint from nominees recommended by the Virginia Coalition of Private Provider Associations; a representative who has previously received services through the Children's Services Act, to be appointed by the Governor with recommendations from entities including the Departments of Education and Social Services and the Virginia Chapter of the National Alliance on

Mental Illness; and two parent representatives. The parent representatives shall be appointed by the Governor for a term not to exceed three years and neither shall be an employee of any public or private program that serves children and families. The Governor's appointments shall be for a term not to exceed three years and shall be limited to no more than two consecutive terms, beginning with appointments after July 1, 2009. Legislative members and ex officio members of the Council shall serve terms coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. Legislative members shall not be included for the purposes of constituting a quorum.

C. The Council shall be chaired by the Secretary of Health and Human Resources or a designated deputy who shall be responsible for convening the council. The Council shall meet, at a minimum, quarterly, to oversee the administration of this article and make such decisions as may be necessary to carry out its purposes. Legislative members shall receive compensation as provided in § 30-19.12 and nonlegislative citizen members shall receive compensation for their services as provided in §§ 2.2-2813 and 2.2-2825.

D. The Council shall have the following powers and duties:

1. Hire and supervise a director of the Office of Children's Services;

2. Appoint the members of the state and local advisory team in accordance with the requirements of § 2.2-5201;

3. Provide for the establishment of interagency programmatic and fiscal policies developed by the Office of Children's Services, which support the purposes of the Children's Services Act (§ 2.2-5200 et seq.), through the promulgation of regulations by the participating state boards or by administrative action, as appropriate;

4. Provide for a public participation process for programmatic and fiscal guidelines and dispute resolution procedures developed for administrative actions that support the purposes of the Children's Services Act (§ 2.2-5200 et seq.). The public participation process shall include, at a minimum, 60 days of public comment and the distribution of these guidelines and procedures to all interested parties;

5. Oversee the administration of and consult with the Virginia Municipal League and the Virginia Association of Counties about state policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund;

6. Provide for the administration of necessary functions that support the work of the Office of Children's Services;

7. Review and take appropriate action on issues brought before it by the Office of Children's Services, Community Policy and Management Teams (CPMTs), local governments, providers and parents;

8. Advise the Governor and appropriate Cabinet Secretaries on proposed policy and operational changes that facilitate interagency service development and implementation, communication and cooperation;

9. Provide administrative support and fiscal incentives for the establishment and operation of local comprehensive service systems;

10. Oversee coordination of early intervention programs to promote comprehensive, coordinated service delivery, local interagency program management, and co-location of programs and services in communities. Early intervention programs include state programs under the administrative control of the state executive council member agencies;

11. Oversee the development and implementation of a mandatory uniform assessment instrument and process to be used by all localities to identify levels of risk of Children's Services Act (CSA) youth;

12. Oversee the development and implementation of uniform guidelines to include initial intake and screening assessment, development and implementation of a plan of care, service monitoring and periodic follow-up, and the formal review of the status of the youth and the family;

13. Oversee the development and implementation of uniform guidelines for documentation for CSA-funded services;

14. Review and approve a request by a CPMT to establish a collaborative, multidisciplinary team process for referral and reviews of children and families pursuant to § 2.2-5209;

15. Oversee the development and implementation of mandatory uniform guidelines for utilization management; each locality receiving funds for activities under the Children's Services Act shall have a locally determined utilization management plan following the guidelines or use of a process approved by the Council for utilization management, covering all CSA-funded services;

16. Oversee the development and implementation of uniform data collection standards and the collection of data, utilizing a secure electronic client-specific database for CSA-funded services, which shall include, but not be limited to, the following client specific information: (i) children served, including those placed out of state; (ii) individual characteristics of youths and families being served; (iii) types of services provided; (iv) service utilization including length of stay; (v) service expenditures; (vi) provider identification number for specific facilities and programs identified by the state in which the child receives services; (vii) a data field indicating the circumstances under which the child ends each service; and (viii) a data field indicating the circumstances under which the child exits the Children's Services Act program. All client-specific information shall remain confidential and only non-identifying aggregate demographic, service, and expenditure information shall be made available to the public;

17. Oversee the development and implementation of a uniform set of performance measures for evaluating the Children's Services Act program, including, but not limited to, the number of

youths served in their homes, schools and communities. Performance measures shall be based on information: (i) collected in the client-specific database referenced in subdivision 16, (ii) from the mandatory uniform assessment instrument referenced in subdivision 11, and (iii) from available and appropriate client outcome data that is not prohibited from being shared under federal law and is routinely collected by the state child-serving agencies that serve on the Council. If provided client-specific information, state child serving agencies shall report available and appropriate outcome data in clause (iii) to the Office of Children's Services. Outcome data submitted to the Office of Children's Services shall be used solely for the administration of the Children's Services Act program. Applicable client outcome data shall include, but not be limited to: (a) permanency outcomes by the Virginia Department of Social Services, (b) recidivism outcomes by the Virginia Department of Juvenile Justice, and (c) educational outcomes by the Virginia Department of Education. All client-specific information shall remain confidential and only non-identifying aggregate outcome information shall be made available to the public;

18. Oversee the development and distribution of management reports that provide information to the public and CPMTs to help evaluate child and family outcomes and public and private provider performance in the provision of services to children and families through the Children's Services Act program. Management reports shall include total expenditures on children served through the Children's Services Act program as reported to the Office of Children's Services by state child-serving agencies on the Council and shall include, but not be limited to: (i) client-specific payments for inpatient and outpatient mental health services, treatment foster care services and residential services made through the Medicaid program and reported by the Virginia Department of Medical Assistance Services and (ii) client-specific payments made through the Title IV-E foster care program reported by the Virginia Department of Social Services. The Office of Children's Services shall provide client-specific information to the state agencies for the sole purpose of the administration of the Children's Services Act program. All client-specific information shall remain confidential and only non-identifying aggregate demographic, service, expenditure, and outcome information shall be made available to the public;

19. Establish and oversee the operation of an informal review and negotiation process with the Director of the Office of Children's Services and a formal dispute resolution procedure before the State Executive Council, which include formal notice and an appeals process, should the Director or Council find, upon a formal written finding, that a CPMT failed to comply with any provision of this Act. "Formal notice" means the Director or Council provides a letter of notification, which communicates the Director's or the Council's finding, explains the effect of the finding, and describes the appeal process, to the chief administrative officer of the local government with a copy to the chair of the CPMT. The dispute resolution procedure shall also include provisions for remediation by the CPMT that shall include a plan of correction recommended by the Council and submitted to the CPMT. If the Council denies reimbursement from the state pool of funds, the Council and the locality shall develop a plan of repayment;

20. Deny state funding to a locality, in accordance with subdivision 19, where the CPMT fails to provide services that comply with the Children's Services Act (§ 2.2-5200 et seq.), any other state law or policy, or any federal law pertaining to the provision of any service funded in accordance with § 2.2-5211;

21. Biennially publish and disseminate to members of the General Assembly and community policy and management teams a state progress report on comprehensive services to children, youth and families and a plan for such services for the next succeeding biennium. The state plan shall:

a. Provide a fiscal profile of current and previous years' federal and state expenditures for a comprehensive service system for children, youth and families;

b. Incorporate information and recommendations from local comprehensive service systems with responsibility for planning and delivering services to children, youth and families;

c. Identify and establish goals for comprehensive services and the estimated costs of implementing these goals, report progress toward previously identified goals and establish priorities for the coming biennium;

d. Report and analyze expenditures associated with children who do not receive pool funding and have emotional and behavioral problems;

e. Identify funding streams used to purchase services in addition to pooled, Medicaid, and Title IV-E funding; and

f. Include such other information or recommendations as may be necessary and appropriate for the improvement and coordinated development of the state's comprehensive services system; and

22. Oversee the development and implementation of mandatory uniform guidelines for intensive care coordination services for children who are at risk of entering, or are placed in, residential care through the Children's Services Act program. The guidelines shall: (i) take into account differences among localities, (ii) specify children and circumstances appropriate for intensive care coordination services, (iii) define intensive care coordination services, and (iv) distinguish intensive care coordination services from the regular case management services provided within the normal scope of responsibility for the child-serving agencies, including the community services board, the local school division, local social services agency, court service unit, and Department of Juvenile Justice. Such guidelines shall address: (a) identifying the strengths and needs of the child and his family through conducting or reviewing comprehensive assessments including, but not limited to, information gathered through the mandatory uniform assessment instrument; (b) identifying specific services and supports necessary to meet the identified needs of the child and his family, building upon the identified strengths; (c) implementing a plan for returning the youth to his home, relative's home, family-like setting, or community at the earliest appropriate time that addresses his needs, including identification of public or private community-based services to support the

youth and his family during transition to community-based care; and (d) implementing a plan for regular monitoring and utilization review of the services and residential placement for the child to determine whether the services and placement continue to provide the most appropriate and effective services for the child and his family.

1992, cc. 837, 880, § 2.1-746; 1995, c. 800; 1996, c. 1024; 1998, c. 622; 1999, c. 669; 2000, cc. 900, 937; 2001, c. 844; 2002, c. 410; 2003, cc. 483, 498; 2004, c. 836; 2005, c. 930; 2008, cc. 39, 170, 277; 2009, cc. 274, 712, 813, 840; 2010, c. 346; 2011, cc. 397, 413; 2012, cc. 223, 746; 2014, c. 406; 2015, c. 366; 2016, c. 443.

§ 2.2-2649. Office of Children's Services established; powers and duties

A. The Office of Children's Services is hereby established to serve as the administrative entity of the Council and to ensure that the decisions of the council are implemented. The director shall be hired by and subject to the direction and supervision of the Council pursuant to § 2.2-2648.

B. The director of the Office of Children's Services shall:

1. Develop and recommend to the state executive council programs and fiscal policies that promote and support cooperation and collaboration in the provision of services to troubled and at-risk youths and their families at the state and local levels;

2. Develop and recommend to the Council state interagency policies governing the use, distribution and monitoring of moneys in the state pool of funds and the state trust fund;

3. Develop and provide for the consistent oversight for program administration and compliance with state policies and procedures;

4. Provide for training and technical assistance to localities in the provision of efficient and effective services that are responsive to the strengths and needs of troubled and at-risk youths and their families;

5. Serve as liaison to the participating state agencies that administratively support the Office and that provide other necessary services;

6. Provide an informal review and negotiation process pursuant to subdivision D 19 of § 2.2-2648;

7. Implement, in collaboration with participating state agencies, policies, guidelines and procedures adopted by the State Executive Council;

8. Consult regularly with the Virginia Municipal League, the Virginia Coalition of Private Provider Associations, and the Virginia Association of Counties about implementation and operation of the Children's Services Act (§ 2.2-5200 et seq.);

9. Hire appropriate staff as approved by the Council;

10. Identify, disseminate, and provide annual training for CSA staff and other interested parties on best practices and evidence-based practices related to the Children's Services Act Program;

11. Perform such other duties as may be assigned by the State Executive Council;

12. Develop and implement uniform data collection standards and collect data, utilizing a secure electronic database for CSA-funded services, in accordance with subdivision D 16 of § 2.2-2648;

13. Develop and implement a uniform set of performance measures for the Children's Services Act program in accordance with subdivision D 17 of § 2.2-2648;

14. Develop, implement, and distribute management reports in accordance with subdivision D 18 of § 2.2-2648;

15. Report to the Council all expenditures associated with serving children who receive pool-funded services. The report shall include expenditures for (i) all services purchased with pool funding; (ii) treatment, foster care case management, community-based mental health services, and residential care funded by Medicaid; and (iii) child-specific payments made through the Title IV-E program;

16. Report to the Council on the nature and cost of all services provided to the population of at-risk and troubled children identified by the State Executive Council as within the scope of the CSA program;

17. Develop and distribute model job descriptions for the position of Children's Services Act Coordinator and provide technical assistance to localities and their coordinators to help them to guide localities in prioritizing coordinator's responsibilities toward activities to maximize program effectiveness and minimize spending; and

18. Develop and distribute guidelines, approved by the State Executive Council, regarding the development and use of multidisciplinary teams, in order to encourage utilization of multidisciplinary teams in service planning and to reduce Family Assessment and Planning Team caseloads to allow Family Assessment and Planning Teams to devote additional time to more complex and potentially costly cases.

C. The director of the Office of Children's Services, in order to provide support and assistance to the Children's Policy and Management Teams (CPMTs) and Family Assessment and Planning Teams (FAPTs) established pursuant to the Children's Services Act (§ 2.2-5200 et seq.), shall:

1. Develop and maintain a web-based statewide automated database, with support from the Department of Information Technology or its successor agency, of the authorized vendors of the Children's Services Act (CSA) services to include verification of a vendor's licensure status, a listing of each discrete CSA service offered by the vendor, and the discrete CSA service's rate determined in accordance with § 2.2-5214; and

2. Develop, in consultation with the Department of General Services, CPMTs, and vendors, a standardized purchase of services contract, which in addition to general contract provisions when utilizing state pool funds will enable localities to specify the discrete service or services they are purchasing for the specified client, the required reporting of the client's service data, including types and numbers of disabilities, mental health and intellectual disability diagnoses, or

delinquent behaviors for which the purchased services are intended to address, the expected outcomes resulting from these services and the performance timeframes mutually agreed to when the services are purchased.

2000, c. 937, § 2.1-746.1; 2001, c. 844; 2002, c. 410; 2003, c. 485; 2008, cc. 38, 277; 2009, c. 275; 2012, cc. 476, 507; 2013, c. 1; 2015, c. 366.

Article 17 - STATE HEALTH BENEFITS ADVISORY COUNCIL

§ 2.2-2650. Repealed

Repealed by Acts 2001, cc. 520 and 806.

Article 18 - TECHNOLOGY SERVICES, COUNCIL ON

§ 2.2-2651. Repealed

Repealed by Acts 2009, c. 86, cl. 2.

Article 19 - VIRGINIA ADVISORY COUNCIL FOR ADULT EDUCATION

§§ 2.2-2652 through 2.2-2654. Repealed

Repealed by Acts 2003, c. 452.

Article 20 - VIRGINIA EQUAL EMPLOYMENT OPPORTUNITY COUNCIL

§§ 2.2-2655, 2.2-2656. Repealed

Repealed by Acts 2001, cc. 520 and 806.

Article 21 - VIRGINIA COUNCIL ON COORDINATING PREVENTION

§§ 2.2-2657 through 2.2-2663. Repealed

Repealed by Acts 2001, c. 577.

Article 22 - VIRGINIA INTERAGENCY COORDINATING COUNCIL

§ 2.2-2664. Virginia Interagency Coordinating Council; purpose; membership; duties

A. The Virginia Interagency Coordinating Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council shall be to promote and coordinate early intervention services in the Commonwealth.

B. The membership and operation of the Council shall be as required by Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.). The Commissioner of the Department of Health, the Director of the Department for the Deaf and Hard-of-Hearing, the Superintendent of Public Instruction, the Director of the Department of Medical Assistance Services, the Commissioner of Behavioral Health and Developmental Services, the Commissioner of Social Services, the Commissioner of the Department for the Blind and Vision Impaired, and the Commissioner of the Bureau of Insurance within the State Corporation Commission shall each appoint one person from his agency to serve as the agency's representative on the Council. The Director of the

Commonwealth's designated protection and advocacy system may appoint one person from his agency to serve as the agency's representative on the Council.

Agency representatives shall regularly inform their agency head of the Council's activities and the status of the implementation of an early intervention services system in the Commonwealth.

C. The Council's duties shall include advising and assisting the state lead agency in the following:

1. Performing its responsibilities for the early intervention services system;

2. Identifying sources of fiscal and other support for early intervention services, recommending financial responsibility arrangements among agencies, and promoting interagency agreements;

3. Developing strategies to encourage full participation, coordination, and cooperation of all appropriate agencies;

4. Resolving interagency disputes;

5. Gathering information about problems that impede timely and effective service delivery and taking steps to ensure that any identified policy problems are resolved;

6. Preparing federal grant applications; and

7. Preparing and submitting an annual report to the Governor and the U.S. Secretary of Education on the status of early intervention services within the Commonwealth.

1992, c. 771, § 2.1-765; 2001, c. 844; 2004, c. 38; 2005, c. 695; 2009, cc. 813, 840; 2013, c. 571.

Article 23 - VIRGINIA MILITARY ADVISORY COUNCIL

§§ 2.2-2665, 2.2-2666. Repealed

Repealed by Acts 2001, c. 577.

Article 23.1 - VIRGINIA MILITARY ADVISORY COUNCIL

§ 2.2-2666.1. Virginia Military Advisory Council; composition; compensation and expenses; meetings; chairman's executive summary

A. The Virginia Military Advisory Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government, to maintain a cooperative and constructive relationship between the Commonwealth and the leadership of the several Armed Forces of the United States and the military commanders of such Armed Forces stationed in the Commonwealth, and to encourage regular communication on continued military facility viability, the exploration of privatization opportunities and issues affecting preparedness, public safety and security.

B. The Council shall be composed of 11 members as follows: the Lieutenant Governor, the Attorney General, the Adjutant General, the Secretary of Veterans and Defense Affairs, the Chairman of the House Committee on Militia, Police and Public Safety, the Chairman of the Senate Committee on General Laws, or their designees, and five members to be appointed by and serve at the

pleasure of the Governor. Representatives of the major military commands and installations located in the Commonwealth or in jurisdictions adjacent thereto shall be invited by the Governor to represent their command or installation at the meetings of the Council. Any legislative member who is appointed by the Governor shall serve a term coincident with his term of office.

C. Legislative members of the Council shall receive such compensation as provided in § 30-19.12, and nonlegislative members shall receive such compensation as provided in § 2.2-2813 for the performance of their duties. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Secretary of Veterans and Defense Affairs.

D. The Secretary of Veterans and Defense Affairs shall be the chairman of the Council. The meetings of the Council shall be held at the call of the chairman or whenever the majority of members so request. A majority of the members shall constitute a quorum.

E. The chairman of the Council shall submit to the Governor and the General Assembly an annual executive summary of the activity and work of the Council no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.

2002, c. 676; 2003, c. 885; 2004, c. 1000; 2005, c. 248; 2006, cc. 860, 901; 2007, c. 415; 2011, cc. 572, 586, 691, 714, 780, 858; 2014, cc. 115, 490; 2015, c. 321.

§ 2.2-2666.2. Duties of Council; staff support

The Council shall identify and study and provide advice and comments to the Governor on issues of mutual concern to the Commonwealth and the Armed Forces of the United States, including exclusive and concurrent jurisdiction over military installations, educational quality and the future of federal impact aid, preparedness, public safety and security concerns, transportation needs, alcoholic beverage law enforcement, substance abuse, social service needs, possible expansion and growth of military facilities in the Commonwealth and such other issues as the Governor or the Council may determine to be appropriate subjects of joint consideration.

Such staff support as is necessary for the conduct of the Council's business shall be furnished by the Office of the Governor, the Office of the Secretary of Veterans and Defense Affairs, and such other executive agencies as the Governor may designate.

2002, c. 676; 2011, cc. 780, 858; 2014, cc. 115, 490.

§ 2.2-2666.3. (Contingent expiration) Oceana/Fentress Military Advisory Council created; composition; duties; staff support

A. The Oceana/Fentress Military Advisory Council (the Oceana/Fentress Council) is hereby created as a subunit of the Virginia Military Advisory Council. The Oceana/Fentress Council shall be composed of two members of the Chesapeake City Council, two members of the Virginia Beach City

Council, those members of the Virginia General Assembly whose districts encompass Naval Air Station Oceana and Naval Auxiliary Landing Field Fentress, the Commander, Navy Mid-Atlantic Region or his representative, and the Commanding Officer of Naval Air Station Oceana or his representative.

B. The Oceana/Fentress Council shall identify and study and provide advice and comments to the Virginia Military Advisory Council on issues of mutual concern to the Commonwealth and the Navy concerning Naval Air Station Oceana and Naval Auxiliary Landing Field Fentress and address such other issues as the Governor or the Virginia Military Advisory Council may determine to be appropriate subjects of consideration.

C. Such staff support as is necessary for the conduct of the Oceana/Fentress Council's business shall be furnished by the Office of the Secretary of Veterans and Defense Affairs.

2006, cc. 266, 328; 2010, c. 75; 2011, cc. 780, 858; 2012, cc. 803, 835; 2014, cc. 115, 490.

Article 24 - VIRGINIA RECYCLING MARKETS DEVELOPMENT COUNCIL

§§ 2.2-2667, 2.2-2668. Repealed
Repealed by Acts 2011, cc. 594 and 681, cl. 2.

Article 25 - VIRGINIA WORKFORCE COUNCIL

§§ 2.2-2669 through 2.2-2674.1. Repealed
Repealed by Acts 2014, c. 815, cl. 2.

Article 26 - VIRGINIA COUNCIL ON HUMAN RESOURCES

§§ 2.2-2675 through 2.2-2678. Repealed
Repealed by Acts 2012, cc. 803 and 835, cl. 7.

Article 27 - THE ADVISORY COUNCIL ON THE FUTURE OF NURSING IN VIRGINIA

§§ 2.2-2679, 2.2-2680. Expired
Expired.

Article 28 - JOINT LEADERSHIP COUNCIL OF VETERANS SERVICE ORGANIZATIONS

§ 2.2-2681. Joint Leadership Council of Veterans Service Organizations; membership; terms; chairman; quorum; compensation
A. The Joint Leadership Council of Veterans Service Organizations (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The Council shall be composed of one representative from each qualifying veterans service organization, to be appointed by the Governor, and the Commissioner of the Department of

Veterans Services and the Chairmen of the Board of Veterans Services and the Veterans Services Foundation or their designees, who shall serve as nonvoting ex officio members. Each veterans service organization representative may designate an alternate to attend meetings of the Council in the absence of such representative.

Qualifying veterans service organizations shall be (i) composed principally of and controlled by veterans of the United States Armed Forces, (ii) a registered nonprofit organization in good standing, incorporated for the purpose of promoting programs designed to assist veterans of the armed forces of the United States and their eligible spouses, orphans, and dependents, and (iii) active and in good standing with its parent national organization, if such a parent organization exists.

B. Voting members shall be appointed for terms of three years. Appointments to fill vacancies shall be for the unexpired terms. No person shall be eligible to serve for or during more than two successive three-year terms. Each qualifying veterans service organization shall be responsible for recommending a member for appointment to the Council by the Governor.

C. The Council shall annually elect its chairman and vice-chairman from among its members. The Council shall develop and adopt its own charter, and shall develop and adopt a mission and vision statement in consultation with the Department of Veterans Services. A majority of the voting members of the Council shall constitute a quorum.

D. The Council shall meet at least four times per year. Additional meetings shall be subject to majority approval by the members of the Council.

E. Members of the Council shall not receive any compensation, but shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties as provided in § 2.2-2825.

2003, cc. 657, 670; 2004, c. 697; 2006, c. 150; 2008, cc. 467, 768; 2010, c. 64.

§ 2.2-2682. Powers and duties

A. The Council shall have the following powers and duties:

1. Advise the Department of Veterans Services and the General Assembly regarding (i) methods of providing support for ongoing veterans services and programs, and (ii) addressing veterans issues on an ongoing basis;

2. Recommend issues that may potentially impact veterans of the armed forces of the United States and their eligible spouses, orphans, and dependents;

3. Advise the Department of Veterans Services and the Board of Veterans Services on matters of concern to Virginia-domiciled veterans and their eligible spouses, orphans, and dependents;

4. Promote and support existing veterans services and programs;

5. Recommend and promote implementation of new efficient and effective administrative initiatives that enhance existing veterans services and programs or provide for necessary veterans services and programs not currently provided; and

6. Maintain a nonpartisan approach to maintaining and improving veterans services and programs in the Commonwealth.

B. The chairman shall report to the Commissioner and the Board of Veterans Services the results of its meetings and submit an annual report on or before November 30 of each year.

C. The Council may apply for funds from the Veterans Services Foundation to enable it to better carry out its objectives. The Council shall not impose unreasonable burdens or costs in connection with requests of agencies.

2003, cc. 657, 670; 2008, cc. 467, 768; 2014, c. 809.

Article 29 - COUNCIL ON VIRGINIA'S FUTURE

§ 2.2-2683. (Expires July 1, 2017) Definitions
As used in this article:

"Long-term objective" means a measurable standard of desired performance achievement extending at least five years into the future.

"Performance budgeting" means a systematic incorporation of planning, strategic performance and productivity measurement, and program evaluation information into the budgetary process.

"Performance management" means a management system consisting of strategic planning, strategic performance and productivity measurement, program evaluation, and performance budgeting.

"Program evaluation" means an evaluation of the progress made toward the achievement of long-term objectives, current initiatives, and increased productivity.

"Roadmap" or "Roadmap for Virginia's Future" means a planning process that may include some or all of the following sequential steps: (i) developing a set of guiding principles that are reflective of public sentiment and relevant to critical decision-making; (ii) establishing a long-term vision for the Commonwealth; (iii) conducting a situation analyses of core state service categories; (iv) setting long-term objectives for state services; (v) aligning state services to the long-term objectives; (vi) instituting a planning and performance management system consisting of strategic planning, performance measurement, program evaluation, and performance budgeting; and (vii) performing plan adjustments based on public input and evaluation of the results of the Roadmap.

"Situational analyses" means the assessment of state agency performance in core service areas.

"Strategic planning" means the systematic clarification and documentation of what a state agency wishes to achieve and how to achieve it. The objective of strategic planning is a set of goals, action steps, and measurements constructed to guide performance.

"Strategic performance and productivity measures" means the use of data to review the current performance, improvement in productivity, and progress against the long-term objectives.

"Vision" means an aspirational expression of a future condition for the Commonwealth that is both essential and desirable and extends at least 10 years into the future.

2003, c. 900.

§ 2.2-2684. (Expires July 1, 2017) Council on Virginia's Future; purpose

The Council on Virginia's Future (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council is to advise the Governor and the General Assembly on the implementation of the Roadmap for Virginia's Future process.

2003, c. 900.

§ 2.2-2685. (Expires July 1, 2017) Membership; terms; quorum; meetings; compensation and expenses

A. The Council shall be composed of 19 members that include eight legislative members and 11 nonlegislative members as follows:

1. The Governor;

2. The Lieutenant Governor;

3. The Speaker of the House;

4. The majority and minority leaders of the House of Delegates;

5. The Chairman of the House Committee on Appropriations;

6. The President Pro Tempore of the Senate;

7. The majority and minority leaders of the Senate;

8. The Chairman of the Senate Finance Committee;

9. One nonlegislative citizen member appointed by the Speaker of the House;

10. One nonlegislative citizen member appointed by the Senate Committee on Rules;

11. Two Cabinet Secretaries appointed by the Governor; and

12. Five nonlegislative citizen members appointed by the Governor.

B. Legislative members and the two Cabinet Secretaries appointed by the Governor shall serve terms coincident with their terms of office. In the event that a legislative member holds more than one of the positions listed in subsection A, such legislative member shall designate another

legislative member or members, as applicable, to serve as the representative for the other position or positions. After the initial staggering of terms, nonlegislative citizen members appointed by the Speaker of the House of Delegates or the Senate Committee on Rules shall be appointed for a term of two years, and nonlegislative citizen members appointed by the Governor shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. No nonlegislative citizen member appointed by the legislative appointing authorities shall serve more than four consecutive two-year terms and no nonlegislative citizen member appointed by the Governor shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

The Governor shall serve as the chairman of the Council. The Council shall elect a vice-chairman from its membership. A majority of members of the Council shall constitute a quorum. The Council shall meet at least four times each year. The meetings of the Council shall be held at the call of the chairman or whenever four or more members so request.

C. Legislative members of the Council shall receive such compensation as provided in § 30-19.12 and nonlegislative citizen members shall receive compensation as provided in § 2.2-2813 for the performance of their duties. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department of Planning and Budget.

2003, c. 900; 2004, c. 1000; 2010, c. 101.

§ 2.2-2686. (Expires July 1, 2017) Duties of the Council

A. The Council shall have the following duties:

1. Recommend a timetable for phasing in and establishing guiding principles for the Roadmap;

2. Recommend long-term objectives for the Commonwealth and monitor and advise the Governor and the General Assembly regarding the progress toward the objectives;

3. Provide advice on the implementation of the performance-management system across state government;

4. Disseminate information to the public on the Commonwealth's performance-management system;

5. Recommend a systematic process for the periodic evaluation of the Roadmap and adherence to the long-term goals and recommend improvements to the Governor and the General Assembly. The periodic evaluation process shall provide for enhanced opportunities for public participation and input;

6. Beginning November 1, 2004, develop and submit annually to the General Assembly and the Governor and publish to the public a balanced accountability scorecard containing an assessment of (i) current service performance, (ii) productivity improvement, and (iii) progress against long-term objectives. The balanced scorecard shall also contain other evaluative recommendations that will enhance the provision of state services and suggested measures to evaluate progress against long-term objectives; and

7. Solicit public input on appropriate aspects of the Roadmap as determined by the Council.

B. By January 1, 2004, the Council shall recommend to the Governor and the General Assembly legislation defining the vision, long-term objectives, and appropriate performance measures for state government. The Council shall review the long-term objectives for state government every two years.

2003, c. 900.

§ 2.2-2687. (Expires July 1, 2017) Advisory committees

The Council may form such advisory committees as it deems necessary, convenient, or desirable to advise and assist in performing the duties conferred by this article. The disclosure requirements of subsection B of § 2.2-3114 of the State and Local Government Conflict of Interests Act shall apply to members of the advisory committees.

2003, c. 900.

§ 2.2-2688. (Expires July 1, 2017) Staff; cooperation and assistance

A. The Department of Planning and Budget shall provide staff assistance to the Council. Additional assistance as needed shall be provided by the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, and the staffs of the House Committee on Appropriations and the Senate Finance Committee. All agencies, authorities, and institutions of the Commonwealth shall cooperate and provide such assistance to the Commission as the Commission may request.

B. The Chairman, in consultation with the Council, may hire or appoint an Executive Director for the Council if deemed appropriate.

2003, c. 900.

§ 2.2-2689. (Expires July 1, 2017) Chairman's executive summary of activity and work of the Council

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

2003, c. 900.

Article 30 - THE INTERAGENCY CIVIL ADMISSIONS ADVISORY COUNCIL

§§ 2.2-2690 through 2.2-2694. Repealed

Repealed by Acts 2009, c. 90.

§ 2.2-2695. Repealed

Repealed by Acts 2008, c. 293, cl. 1.

Article 31 - SUBSTANCE ABUSE SERVICES COUNCIL

§ 2.2-2696. Substance Abuse Services Council

A. The Substance Abuse Services Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council is to advise and make recommendations to the Governor, the General Assembly, and the State Board of Behavioral Health and Developmental Services on broad policies and goals and on the coordination of the Commonwealth's public and private efforts to control substance abuse, as defined in § 37.2-100.

B. (Effective until July 1, 2018) The Council shall consist of 29 members. Four members of the House of Delegates shall be appointed by the Speaker of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, and two members of the Senate shall be appointed by the Senate Committee on Rules. The Governor shall appoint one member representing the Virginia Sheriffs' Association, one member representing the Virginia Drug Courts Association, one member representing the Substance Abuse Certification Alliance of Virginia, two members representing the Virginia Association of Community Services Boards, and two members representing statewide consumer and advocacy organizations. The Council shall also include the Commissioner of Behavioral Health and Developmental Services; the Commissioner of Health; the Commissioner of the Department of Motor Vehicles; the Superintendent of Public Instruction; the Directors of the Departments of Juvenile Justice, Corrections, Criminal Justice Services, Medical Assistance Services, and Social Services; the Chief Operating Officer of the Department of Alcoholic Beverage Control; the Executive Director of the Virginia Foundation for Healthy Youth or his designee; the Executive Director of the Commission on the Virginia Alcohol Safety Action Program or his designee; and the chairs or their designees of the Virginia Association of Drug and Alcohol Programs, the Virginia Association of Alcoholism and Drug Abuse Counselors, and the Substance Abuse Council and the Prevention Task Force of the Virginia Association of Community Services Boards.

B. (Effective July 1, 2018) The Council shall consist of 29 members. Four members of the House of Delegates shall be appointed by the Speaker of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, and two members of the Senate shall be appointed by the Senate Committee on Rules. The Governor shall appoint one member representing the Virginia Sheriffs' Association, one member representing the Virginia Drug Courts Association, one member representing the Substance Abuse Certification

Alliance of Virginia, two members representing the Virginia Association of Community Services Boards, and two members representing statewide consumer and advocacy organizations. The Council shall also include the Commissioner of Behavioral Health and Developmental Services; the Commissioner of Health; the Commissioner of the Department of Motor Vehicles; the Superintendent of Public Instruction; the Directors of the Departments of Juvenile Justice, Corrections, Criminal Justice Services, Medical Assistance Services, and Social Services; the Chief Executive Officer of the Virginia Alcoholic Beverage Control Authority; the Executive Director of the Virginia Foundation for Healthy Youth or his designee; the Executive Director of the Commission on the Virginia Alcohol Safety Action Program or his designee; and the chairs or their designees of the Virginia Association of Drug and Alcohol Programs, the Virginia Association of Alcoholism and Drug Abuse Counselors, and the Substance Abuse Council and the Prevention Task Force of the Virginia Association of Community Services Boards.

C. Appointments of legislative members and heads of agencies or representatives of organizations shall be for terms consistent with their terms of office. Beginning July 1, 2011, the Governor's appointments of the seven nonlegislative citizen members shall be staggered as follows: two members for a term of one year, three members for a term of two years, and two members for a term of three years. Thereafter, appointments of nonlegislative members shall be for terms of three years, except an appointment to fill a vacancy, which shall be for the unexpired term. The Governor shall appoint a chairman from among the members for a two-year term. No member shall be eligible to serve more than two consecutive terms as chairman.

No person shall be eligible to serve more than two successive terms, provided that a person appointed to fill a vacancy may serve two full successive terms.

D. The Council shall meet at least four times annually and more often if deemed necessary or advisable by the chairman.

E. Members of the Council shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the cost of expenses shall be provided by the Department of Behavioral Health and Developmental Services.

F. The duties of the Council shall be:

1. To recommend policies and goals to the Governor, the General Assembly, and the State Board of Behavioral Health and Developmental Services;

2. To coordinate agency programs and activities, to prevent duplication of functions, and to combine all agency plans into a comprehensive interagency state plan for substance abuse services;

3. To review and comment on annual state agency budget requests regarding substance abuse and on all applications for state or federal funds or services to be used in substance abuse programs;

4. To define responsibilities among state agencies for various programs for persons with substance abuse and to encourage cooperation among agencies; and

5. To make investigations, issue annual reports to the Governor and the General Assembly, and make recommendations relevant to substance abuse upon the request of the Governor.

G. Staff assistance shall be provided to the Council by the Office of Substance Abuse Services of the Department of Behavioral Health and Developmental Services.

1976, c. 767, § 37.1-207; 1977, c. 18; 1978, c. 171; 1979, c. 678; 1980, c. 582; 1984, c. 589; 1990, cc. 1, 288, 317; 1998, c. 724; 1999, c. 614; 2005, cc. 713, 716; 2009, cc. 424, 554, 813, 840; 2011, cc. 691, 714; 2012, cc. 803, 835; 2015, cc. 38, 730.

§ 2.2-2697. Review of state agency substance abuse treatment programs

A. On or before December 1, 2005, the Council shall forward to the Governor and the General Assembly a Comprehensive Interagency State Plan identifying for each agency in state government (i) the substance abuse treatment program the agency administers; (ii) the program's objectives, including outcome measures for each program objective; (iii) program actions to achieve the objectives; (iv) the costs necessary to implement the program actions; and (v) an estimate of the extent these programs have met demand for substance abuse treatment services in the Commonwealth. The Council shall develop specific criteria for outcome data collection for all affected agencies, including a comparison of the extent to which the existing outcome measures address applicable federally mandated outcome measures and an identification of common outcome measures across agencies and programs. The plan shall also include an assessment of each agency's capacity to collect, analyze, and report the information required by subsection B.

B. Beginning in 2006, the Comprehensive Interagency State Plan shall include the following analysis for each agency-administered substance abuse treatment program: (i) the amount of funding expended under the program for the prior fiscal year; (ii) the number of individuals served by the program using that funding; (iii) the extent to which program objectives have been accomplished as reflected by an evaluation of outcome measures; (iv) identifying the most effective substance abuse treatment, based on a combination of per person costs and success in meeting program objectives; (v) how effectiveness could be improved; (vi) an estimate of the cost effectiveness of these programs; and (vii) recommendations on the funding of programs based on these analyses.

C. All agencies identified in the Comprehensive Interagency State Plan as administering a substance abuse treatment program shall provide the information and staff support necessary for the Council to complete the Plan. In addition, any agency that captures outcome-related information concerning substance abuse programs identified in subsection B shall make this information available for analysis upon request.

2004, c. 686, § 37.1-207.1; 2005, c. 716.

Article 32 - MODELING AND SIMULATION ADVISORY COUNCIL

§ 2.2-2698. Modeling and Simulation Advisory Council; purpose; membership; chairman

A. The Modeling and Simulation Advisory Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council shall be to advise the Governor on policy and funding priorities to promote the modeling and simulation industry in the Commonwealth.

B. The Council shall consist of 15 members as follows: three legislative members of the House of Delegates to be appointed by the Speaker of the House of Delegates; one legislative member of the Senate to be appointed by the Senate Committee on Rules; six citizen representatives of the modeling and simulation industry and two citizen members representing Virginia public institutions of higher education with modeling and simulation capabilities to be appointed by the Governor; the Secretary of Technology and the Secretary of Commerce and Trade or their designees; and the Executive Director of the Virginia Modeling, Analysis and Simulation Center.

Beginning July 1, 2012, the Governor's appointments shall be staggered as follows: two members for a term of two years, two members for a term of three years, and two members for a term of four years. Thereafter, appointments by the Governor shall be for terms of four years, except an appointment to fill a vacancy, which shall be for the unexpired term. Ex officio members and legislative members shall serve terms coincident with their terms of office. All members shall be eligible for reappointment. Vacancies shall be filled in the manner of the original appointments.

C. The Council shall elect a chairman and a vice-chairman annually from among its membership. A majority of the members shall constitute a quorum. The Council shall meet biannually and at such other times as may be called by the chairman or a majority of the Council. Staff to the Council shall be provided by the office of the Secretary of Technology.

2007, c. 857; 2012, cc. 440, 502.

§ 2.2-2699. Powers and duties of the Council

The Council shall have the power and duty to:

1. Advise the Governor on funding priorities for modeling and simulation programs at the Commonwealth's institutions of higher education.

2. Develop policy initiatives and advise the Governor on strategies to promote the modeling and simulation industry in the Commonwealth.

3. Advise the Virginia Economic Development Partnership regarding (i) attracting new modeling and simulation businesses to the Commonwealth and (ii) assisting the development of the Commonwealth's existing modeling and simulation industry.

4. Develop recommendations in conjunction with the Virginia Economic Development Partnership on how to market the Commonwealth's modeling and simulation capabilities to all businesses and industries, especially those not fully utilizing modeling and simulation applications.

5. Develop recommendations that will assist in making Virginia a national leader in the modeling and simulation industry.

2007, c. 857.

Article 33 - AEROSPACE ADVISORY COUNCIL

§ 2.2-2699.1. Aerospace Advisory Council; purpose; membership; compensation; chairman

A. The Aerospace Advisory Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council shall be to advise the Governor, the Joint Commission on Technology and Science, and the Secretaries of Commerce and Trade, Technology, and Education on policy and funding priorities with respect to aerospace economic development, workforce training, educational programs, and educational curriculum. The Council shall suggest strategies to attract and promote the development of existing aerospace companies, new aerospace companies, federal aerospace agencies, aerospace research, venture and human capital, and applied research and technology that contribute to the growth and development of the aerospace sector in the Commonwealth.

B. The Council shall have a total membership of 20 members that shall consist of four legislative members, nine nonlegislative citizen members, and seven ex officio members. Members shall be appointed as follows: three members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one member of the Senate, to be appointed by the Senate Committee on Rules; and nine nonlegislative citizen members, of whom one shall represent the Mid-Atlantic Regional Spaceport, one shall represent Old Dominion University, one shall represent the University of Virginia, one shall represent Virginia Tech, and five shall represent aerospace companies or suppliers within the Commonwealth, to be appointed by the Governor, and serve with voting privileges. The Director of the Department of Aviation, Director of the National Institute of Aerospace, President and CEO of the Virginia Tourism Authority, Director of the Virginia Space Grant Consortium, and President and CEO of the Virginia Economic Development Partnership, or their designees, shall serve as ex officio members with voting privileges. A representative of NASA Wallops Flight Facility and a representative of NASA's Langley Research Center shall be requested to serve by the Governor as ex officio members with nonvoting privileges. Nonlegislative citizen members of the Council shall be citizens of the Commonwealth.

Legislative members and ex officio members shall serve terms coincident with their terms of office. Other members shall be appointed for terms of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

C. Legislative members of the Council shall receive such compensation as provided in § 30-19.12. Nonlegislative citizen members shall serve without compensation or reimbursement for reasonable and necessary expenses. Funding for compensation and expenses of legislative members

shall be provided by the operating budgets of the Clerk of the House of Delegates and the Clerk of the Senate upon approval of the Joint Rules Committee. All other expenses of the Council shall be provided by the Department of Aviation.

D. The Council shall elect a chairman and a vice-chairman annually from among its legislative membership. A majority of the members shall constitute a quorum. The Council shall meet at such times as may be called by the chairman or a majority of the Council.

E. Staff to the Council shall be provided by the Department of Aviation. The Division of Legislative Services shall provide additional staff support to legislative members serving on the Council.

2007, c. 891; 2008, c. 745; 2009, cc. 485, 633; 2010, cc. 339, 836; 2011, cc. 540, 691, 714.

§ 2.2-2699.2. Powers and duties of the Council

The Council shall have the power and duty to:

1. Identify opportunities and recommend actions to use the economic development engine offered by Virginia's aerospace sector to benefit the sector and the Commonwealth, including the attraction to Virginia of launch and other aerospace companies, as well as federal, national, and international investments, such as the FAA's NextGen initiative and emerging NASA and other federal programs;

2. Develop a long-term strategic plan to make the Mid-Atlantic Regional Spaceport the commercial hub for space travel originating or concluding in the United States;

3. Contribute to the continued development of the Mid-Atlantic Regional Spaceport. Development efforts shall include, in part:

a. Identification of any federal or state regulatory impediments, including taxation, to the development of the Mid-Atlantic Regional Spaceport;

b. Identification of threats to the spaceport's viability, such as encroachment, zoning, mineral exploration and exploitation, and noncompatible uses of the spaceport; and

c. Identification and recommendation of policy and legislative solutions to potential state legal barriers to human spaceflight;

4. Advise the Governor and the General Assembly on infrastructure and marketing investments needed to achieve the full potential of Virginia's aerospace sector as a whole, including, but not limited to, the Mid-Atlantic Regional Spaceport;

5. Identify and recommend policies to support the critical role of Virginia's universities in providing human capital and research contributions that significantly impact the economic development of aerospace-related and aerodynamic-dependent industries in the Commonwealth;

6. Identify and recommend policies to support aerospace sector needs for workforce development as provided by the Virginia Community College System and precollege educational system, includ-

ing suggestions for enhanced development of Virginia's high-tech workforce pipeline in engineering, technology, and science; and

7. Assist the Governor in any aerospace-related events and conferences hosted by the Commonwealth.

2007, c. 891; 2010, cc. 339, 836.

Article 34 - BROADBAND ADVISORY COUNCIL

§ 2.2-2699.3. (Expires July 1, 2018) Broadband Advisory Council; purpose; membership; compensation; chairman

A. The Broadband Advisory Council (the Council) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The purpose of the Council shall be to advise the Governor on policy and funding priorities to expedite deployment and reduce the cost of broadband access in the Commonwealth.

B. The Council shall have a total membership of 14 members that shall consist of six legislative members, four nonlegislative citizen members, and four ex officio members. Members shall be appointed as follows: four members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two members of the Senate to be appointed by the Senate Committee on Rules; and four nonlegislative citizen members to be appointed by the Governor, of whom one shall be a representative of the Virginia Cable Telecommunications Association, one shall be a representative of the Virginia Telecommunications Industry Association, one shall be a representative from local government recommended by the Virginia Municipal League and Virginia Association of Counties, and one shall be a representative of the Virginia Wireless Internet Service Providers Association. The Secretaries of Agriculture and Forestry, Commerce and Trade, and Technology, or their designees, and the executive director of the Center for Rural Virginia shall serve ex officio. Legislative and ex officio members shall serve terms coincident with their terms of office. Other members shall be appointed for terms of two years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

C. Legislative members of the Council shall receive such compensation as provided in § 30-19.12. Nonlegislative citizen members shall serve without compensation. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for compensation and expenses of legislative members shall be provided by the operating budgets of the Clerk of the House of Delegates and the Clerk of the Senate upon approval of the Joint Rules Committee. Funding for the costs of expenses of the nonlegislative citizen members and all other expenses of the Council shall be provided by the Office of the Secretary of Technology.

D. The Council shall elect a chairman and a vice-chairman annually from among its membership. A majority of the members shall constitute a quorum. The Council shall meet at such times as may be called by the chairman or a majority of the Council.

E. Staff to the Council shall be provided by the Office of Telework Promotion and Broadband Assistance. The Division of Legislative Services shall provide additional staff support to legislative members serving on the Council.

2009, cc. 818, 852; 2012, c. 528; 2015, c. 239.

§ 2.2-2699.4. (Expires July 1, 2018) Powers and duties of the Council

The Council shall have the power and duty to:

1. Monitor the broadband-based development efforts of other states and nations in areas such as business, education, and health;

2. Advise the Governor, Secretary of Technology, and the General Assembly on policies and strategies related to making affordable broadband services available to every Virginia home and business;

3. Monitor broadband-related activities at the federal level;

4. Encourage public-private partnerships to increase the deployment and adoption of broadband services and applications;

5. Annually report to the Governor and the Joint Commission on Technology and Science on the progress towards the goal of universal access for businesses and on the assessment of Commonwealth broadband infrastructure investments and utilization of Council-supported resources to promote broadband access;

6. Periodically review and comment on the quality, availability, and accessibility of state-maintained or funded broadband resources and programs, including but not limited to: Virginia Resources Authority Act funding of the "Online Community Toolkit"; the Center for Innovative Technology's mapping and outreach initiatives; investments made through programs administered by the Department of Education, Department of Housing and Community Development, Department of Public Rail and Transportation, and the Tobacco Region Revitalization Commission; and

7. Monitor regulatory and policy changes for potential impact on broadband deployment and sustainability in the Commonwealth.

2009, cc. 818, 852.

Article 35 - INFORMATION TECHNOLOGY ADVISORY COUNCIL

§ 2.2-2699.5. Information Technology Advisory Council; membership; terms; quorum; compensation; staff

A. The Information Technology Advisory Council (ITAC) is established as an advisory council, within the meaning of § 2.2-2100, in the executive branch of state government. The ITAC shall be

responsible for advising the Chief Information Officer (CIO) and the Secretary of Technology on the planning, budgeting, acquiring, using, disposing, managing, and administering of information technology in the Commonwealth.

B. The ITAC shall consist of not more than 16 members as follows: (i) one representative from an agency under each of the Governor's Secretaries, as set out in Chapter 2 (§ 2.2-200 et seq.), to be appointed by the Governor and serve with voting privileges; (ii) the Secretary of Technology and the CIO, who shall serve ex officio with voting privileges; (iii) the Secretary of the Commonwealth or his designee; and (iv) at the Governor's discretion, not more than two nonlegislative citizen members to be appointed by the Governor and serve with voting privileges.

Nonlegislative citizen members shall be appointed for terms of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

C. The ITAC shall elect a chairman and vice-chairman annually from among the members, except that neither the Secretary of Technology nor the CIO may serve as chairman. A majority of the members shall constitute a quorum. The meetings of the ITAC shall be held at the call of the chairman, the Secretary of Technology, or the CIO, or whenever the majority of the members so request.

D. Nonlegislative citizen members shall receive compensation and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties, as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Virginia Information Technologies Agency.

E. The disclosure requirements of subsection B of § 2.2-3114 of the State and Local Government Conflict of Interests Act shall apply to citizen members of the ITAC.

F. The Virginia Information Technologies Agency shall serve as staff to the ITAC.

2010, cc. 136, 145; 2011, cc. 691, 714; 2013, cc. 161, 227; 2014, cc. 115, 490.

§ 2.2-2699.6. Powers and duties of the ITAC

A. The ITAC shall have the power and duty to:

1. Adopt rules and procedures for the conduct of its business;

2. Advise the CIO on the development of all major information technology projects as defined in § 2.2-2006;

3. Advise the CIO on strategies, standards, and priorities for the use of information technology for executive branch agencies;

4. Advise the CIO on developing the six-year plan for information technology projects;

5. Advise the CIO on statewide technical and data standards for information technology and related systems, including the utilization of nationally recognized technical and data standards for health information technology systems or software purchased by a state agency of the Commonwealth;

6. Advise the CIO on statewide information technology architecture and related system technical and data standards;

7. Advise the CIO on assessing and meeting the Commonwealth's business needs through the application of information technology;

8. Advise the CIO on the prioritization, development, and implementation of enterprise-wide technology applications; annually review all executive branch agency technology applications budgets; and advise the CIO on infrastructure expenditures; and

9. Advise the CIO on the development, implementation, and execution of a technology applications governance framework for executive branch agencies. Such framework shall establish the categories of use by which technology applications shall be classified, including but not limited to enterprise-wide, multiagency, or agency-specific. The framework shall also provide the policies and procedures for determining within each category of use (i) the ownership and sponsorship of applications, (ii) the proper development of technology applications, (iii) the schedule for maintenance or enhancement of applications, and (iv) the methodology for retirement or replacement of applications. ITAC shall include the participation of executive branch agency leaders who are necessary for defining agency business needs, as well as agency information technology managers who are necessary for overseeing technology applications performance relative to agency business needs. Agency representatives shall assist ITAC in determining the potential information technology solutions that can meet agency business needs, as well as how those solutions may be funded.

B. Definitions.

As used in this section:

"Executive branch agency" has the same meaning as set forth in § 2.2-2006.

"Technology applications" includes, but is not limited to, hardware, software, maintenance, facilities, contractor services, goods, and services that promote business functionality and facilitate the storage, flow, use or processing of information by executive branch agencies of the Commonwealth in the execution of their business activities.

2010, cc. 136, 145; 2011, cc. 266, 313; 2016, c. 296.

§ 2.2-2699.7. Health Information Technology Standards Advisory Committee

The ITAC may appoint an advisory committee of persons with expertise in health care and information technology to advise the ITAC on the utilization of nationally recognized technical and data standards for health information technology systems or software pursuant to subdivision A 5 of §

2.2-2699.6. The ITAC, in consultation with the Secretary of Health and Human Resources, may appoint up to five persons to serve on the advisory committee. Members appointed to the advisory committee shall serve without compensation, but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in § 2.2-2825. The CIO, the Secretary of Technology, and the Secretary of Health and Human Resources, or their designees, may also serve on the advisory committee.

2010, cc. 136, 145; 2011, cc. 266, 313.

Chapter 27 - FOUNDATIONS AND OTHER COLLEGIAL BODIES

Article 1 - VIRGINIA ARTS FOUNDATION

§ 2.2-2700. (Repealed effective October 1, 2016) Virginia Arts Foundation; board of trustees; compensation; staff

A. The Virginia Arts Foundation (the "Foundation"), is established to serve as an advisory foundation, within the meaning of § 2.2-2100, in the executive branch of state government and shall be deemed a body politic and corporate to be organized and to have such powers and duties as provided in this article.

B. The Foundation shall be governed by a board of trustees, consisting of the members of the Virginia Commission for the Arts.

C. Any person designated by the board of trustees to handle the funds of the Foundation shall give bond, with corporate surety, in a penalty fixed by the Governor, conditioned upon the faithful discharge of his duties. Any premium on the bond shall be paid from funds available to the Foundation.

D. The board of trustees, acting as members of the Virginia Commission for the Arts, shall be entitled to reimbursement for all actual and necessary expenses, as provided by § 2.2-2509.

E. The Director of the Virginia Commission for the Arts shall serve as the chairman, and the staff of such Commission shall serve as staff for the Foundation.

1997, c. 878, §§ 9-84.08, 9-84.09; 2001, c. 844.

§ 2.2-2701. (Repealed effective October 1, 2016) Powers of Foundation

The Foundation may:

1. Make expenditures from the Fund's interest and income to assist the Virginia Commission for the Arts in promoting the arts in the Commonwealth in accordance with § 2.2-2704 and to assist not-for-profit arts and cultural institutions and organizations within the Commonwealth to assess, enhance, and plan for enhancement of their fiscal stability, financial management and control capabilities, and capacity to raise funds for the furtherance of their respective missions from nongovernmental sources.

2. Accept, hold and administer gifts and bequests of money, securities, or other property, absolutely or in trust, for the purposes for which the Foundation is created.

3. Enter into contracts and execute all instruments necessary and appropriate to carry out the Foundation's purposes.

4. Explore and make recommendations concerning other possible dedicated revenue sources for the Fund.

5. Perform any lawful acts necessary or appropriate to carry out the purposes of the Foundation.

1997, c. 878, § 9-84.09:2; 2001, c. 844; 2002, c. 260.

§ 2.2-2702. (Repealed effective October 1, 2016) Virginia Arts Foundation Fund

A. There is created the Virginia Arts Foundation Fund, a special nonreverting trust fund on the books of the Comptroller, to be administered by the Foundation.

B. The Fund shall include such funds as may be appropriated by the General Assembly; revenues transferred to the Fund from the special license plates for Virginians for the Arts program pursuant to § 46.2-749.2:2; voluntary contributions collected through the income tax checkoff for the arts pursuant to subdivision B 8 of § 58.1-344.3; and designated gifts, contributions and bequests of money, securities, or other property of whatsoever character.

C. All money, securities, or other property designated for the Fund and any interest or income therefrom shall remain in the Fund and shall not revert to the general fund. The Fund's principal shall not be subject to expenditure by the Foundation.

1997, c. 878, § 9-84.09:1; 2001, c. 844; 2005, cc. 860, 889.

§ 2.2-2703. Expired

Expired.

§ 2.2-2704. (Repealed effective October 1, 2016) Gifts and bequests; exemption from taxation

Gifts and bequests of money, securities, or other property to the Fund, and the interest or income therefrom, shall be deemed gifts to the Commonwealth, and the Fund shall be exempt from all state and local taxes. Unless otherwise restricted by the terms of the gift or bequest, the Foundation may sell, exchange, or otherwise dispose of such gifts and bequests. The proceeds from such transactions shall be deposited to the credit of the Fund. The Foundation shall not actively solicit private donations for the Fund; however, this limitation shall not prevent the Foundation from actively encouraging financial support for the Foundation through the special license plate and income tax checkoff programs. Notwithstanding any other provision of this section, the Foundation may accept and solicit public and private contributions for the limited purpose of assisting Virginia not-for-profit arts and cultural institutions and organizations, to enhance the fiscal stability, financial management, and fundraising abilities of such organizations.

1997, c. 878, § 9-84.09:3; 2001, c. 844; 2002, c. 260.

Article 2 - VIRGINIA WAR MEMORIAL FOUNDATION

§§ 2.2-2705 through 2.2-2708.1. Repealed
Repealed by Acts 2012, cc. 803 and 835, cl. 112.

Article 3 - WORLD TRADE ALLIANCE OF THE BLUE RIDGE

§§ 2.2-2709, 2.2-2710. Repealed
Repealed by Acts 2003, c. 885.

Article 4 - BOATING ADVISORY COMMITTEE

§ 2.2-2711. Repealed
Repealed by Acts 2012, cc. 803 and 835, cl. 95.

Article 5 - DEBT CAPACITY ADVISORY COMMITTEE

§ 2.2-2712. Debt Capacity Advisory Committee; membership; terms; chairman; compensation; staff
A. The Debt Capacity Advisory Committee (the Committee) is established as an advisory committee, within the meaning of § 2.2-2100, in the executive branch of state government.

B. The Committee shall consist of the Secretary of Finance; the State Treasurer; the Director of the Department of Planning and Budget; State Comptroller; the Auditor of Public Accounts; the Director of the Joint Legislative Audit and Review Commission; the Staff Director of the House Committee on Appropriations; the Staff Director of the Senate Committee on Finance; and two citizen members who have expertise in financial matters to be appointed by the Governor.

C. Of the citizen members appointed for terms beginning July 1, 1994, one shall be appointed for an initial term of three years and the other for an initial term of five years. Successors shall be appointed to serve for terms of four years each. Vacancies occurring other than by expiration of term shall be filled by appointment of the Governor for the remainder of the unexpired term. All appointments shall be subject to confirmation by the General Assembly. Members shall continue to hold office until their successors have been appointed and qualified.

D. The Secretary of Finance shall be the chairperson of the Committee.

E. All members of the Committee shall serve without compensation but shall receive reasonable and necessary expenses incurred in the discharge of their duties as provided in § 2.2-2825.

F. The Department of the Treasury shall serve as staff to the Committee.

1994, c. 43, § 2.1-304.2; 2001, c. 844; 2010, c. 32.

§ 2.2-2713. Powers and duties of the Committee
The Committee shall have the power and duty to:

1. Annually review the size and condition of the Commonwealth's tax-supported debt and submit to the Governor and to the General Assembly an estimate of the maximum amount of new tax-supported debt that prudently may be authorized for the next biennium. The estimate shall be advisory and in no way bind the Governor or the General Assembly;

2. Annually review the amount and condition of bonds, notes, and other security obligations of the Commonwealth's agencies, institutions, boards, and authorities, for which the (i) Commonwealth has a contingent or limited liability or (ii) General Assembly is permitted to replenish reserve funds if deficiencies occur, and submit to the Governor and the General Assembly an annual report with the Committee's recommendation to ensure the prudent use of such obligations. Such review shall be submitted on or before January 1 of each year; and

3. Conduct ongoing reviews of the amount and condition of bonds, notes, and other security obligations of the Commonwealth's agencies, institutions, boards, and authorities not secured by the full faith and credit of the Commonwealth or for which the General Assembly is not permitted to replenish reserve funds, and when appropriate, shall recommend limits on such additional obligations to the Governor and to the General Assembly.

1994, c. 43, § 2.1-304.3; 1997, c. 187; 2001, c. 844.

§ 2.2-2714. Estimated amount of prudent tax-supported debt; affordability considerations
Before January 1 of each year, the Committee shall submit to the Governor and to the General Assembly the Committee's estimate of tax-supported debt that prudently may be authorized for the next fiscal year, together with a report explaining the basis for the estimate. In developing its annual estimate and in preparing its annual report, the Committee shall, at a minimum, consider:

1. The amount of tax-supported debt that, during the next fiscal year and annually for the following nine fiscal years (i) will be outstanding and (ii) has been authorized but not yet issued;

2. A projected schedule of affordable, state tax-supported debt authorizations for the next biennium. The assessment of the affordability of the projected authorizations shall include but not be limited to the considerations specified in this section;

3. Projected debt-service requirements during the next fiscal year and annually for the following nine fiscal years based upon (i) existing outstanding debt, (ii) previously authorized but unissued debt, and (iii) projected bond authorizations;

4. The criteria that recognized bond rating agencies use to judge the quality of issues of Commonwealth bonds;

5. Any other factor that is relevant to (i) the ability of the Commonwealth to meet its projected debt service requirements for the next two fiscal years; (ii) the ability of the Commonwealth to support additional debt service in the upcoming biennium; (iii) the requirements of the statewide capital plan; and (iv) the interest rate to be borne by, the credit rating on, or any other factor affecting the marketability of such bonds; and

6. The effect of authorizations of new tax-supported debt on each of the considerations of this section.

1994, c. 43, § 2.1-304.4; 1997, c. 187; 2001, c. 844.

Article 6 - VETERANS SERVICES FOUNDATION

§ 2.2-2715. Veterans Services Foundation; purpose; membership; terms; compensation; staff

A. The Veterans Services Foundation (the Foundation) is established as an independent body politic and corporate agency supporting the Department of Veterans Services in the executive branch of state government. The Foundation shall be governed and administered by a board of trustees. The membership of the Foundation shall be composed of the board of trustees, supporting staff, donors, volunteers, and other interested parties.

B. The Foundation shall (i) administer the Veterans Services Fund (the Fund), (ii) provide funding for veterans services and programs in the Commonwealth through the Fund, and (iii) accept and raise revenue from all sources, including private source fundraising, to support the Fund. The Foundation shall submit a quarterly report to the Commissioner of Veterans Services on the Foundation's funding levels and services and an annual report to the Secretary of Veterans and Defense Affairs on or before November 30 of each year. The quarterly report and the annual report shall be submitted electronically.

C. The board of trustees of the Foundation shall consist of the Commissioner of Veterans Services and the Chairmen of the Board of Veterans Services and the Joint Leadership Council of Veterans Service Organizations or their designees, who shall serve as ex officio voting trustees, and 16 trustees to be appointed as follows: eight nonlegislative citizens appointed by the Governor; five nonlegislative citizens appointed by the Speaker of the House of Delegates; and three nonlegislative citizens appointed by the Senate Committee on Rules. A majority of the appointed trustees shall be active or retired chairmen, chief executive officers, or chief financial officers for large private corporations or nonprofit organizations or individuals who have extensive fundraising experience in the private sector. Trustees appointed shall, insofar as possible, be veterans. Each appointing authority shall endeavor to ensure a balanced representation among the officer and enlisted ranks of the armed services and geographical representation on the board of trustees to facilitate fundraising efforts across the state.

Trustees shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All trustees may be reappointed. However, no trustee shall serve more than two consecutive four-year terms. The remainder of any term to which a trustee is appointed to fill a vacancy shall not constitute a term in determining the trustee's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments. Any trustee may be removed at the pleasure of the appointing authority.

D. Trustees shall be reimbursed for their actual expenses incurred while attending meetings of the trustees or performing other duties. However, such reimbursement shall not exceed the per diem rate established for members of the General Assembly pursuant to § 30-19.12.

E. The Department of Veterans Services shall provide the Foundation with administrative and other services.

F. The trustees shall adopt bylaws governing their organization and procedures and may amend the same. The trustees shall elect from their number a chairman and such other officers as their bylaws may provide. Ex officio trustees shall not be eligible to serve as chairman. The trustees shall meet four times a year at such times as they deem appropriate or on call of the chairman. A majority of the voting trustees of the board of trustees shall constitute a quorum.

G. The Director of Finance for the Department of Veterans Services shall serve as the treasurer of the Foundation.

2003, cc. 657, 670; 2004, c. 697; 2006, c. 150; 2008, cc. 467, 486, 768, 872; 2009, c. 368; 2010, c. 64; 2011, cc. 780, 795, 858; 2014, cc. 115, 490; 2015, c. 137; 2016, c. 321.

§ 2.2-2716. Authority of Foundation

The Foundation has the authority to:

1. Administer the Veterans Services Fund and make allocations of revenue from the Fund to the Department of Veterans Services to provide supplemental funding for the Department's services and programs;

2. Accept, hold, and administer gifts and bequests of money, securities, or other property, absolutely or in trust, for the purposes for which the Foundation is created;

3. Enter into contracts and execute all instruments necessary and appropriate to carry out the Foundation's purposes;

4. Take such actions as may be reasonably necessary to seek, promote, and stimulate contributions for the Fund;

5. Develop other possible dedicated revenue sources for the Fund; and

6. Perform any lawful acts necessary or appropriate to carry out the purposes of the Foundation.

2003, cc. 657, 670; 2008, cc. 467, 486, 768, 872; 2011, c. 795.

§ 2.2-2717. Form of accounts and records; annual audit

The accounts and records of the Foundation showing the receipt and disbursement of funds from whatever source derived shall be established by the Auditor of Public Accounts in a manner similar to other organizations. The Auditor of Public Accounts or his legally authorized representative shall annually audit the accounts of the Foundation, and the cost of such audit services shall be borne by the Foundation.

2003, cc. 657, 670.

§ 2.2-2718. Veterans Services Fund established

A. There is created the Veterans Services Fund, a special nonreverting trust fund on the books of the Comptroller, to be administered by the Foundation.

B. The Fund shall include such funds as may be appropriated by the General Assembly; revenues transferred to the Fund from other state programs established for the Fund's benefit; and designated gifts, contributions and bequests of money, securities, or other property of whatsoever character.

C. The Fund shall be used solely for the purposes of carrying out the applicable provisions of Article 6 (§ 2.2-2715 et seq.) of Chapter 27 of this title. The Fund may be used for Foundation expenses, subject to approval by the Board of Trustees. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request.

D. All money, securities, or other property designated for the Fund and any interest or income therefrom shall remain in the Fund and shall not revert to the general fund.

2003, cc. 657, 670; 2010, c. 369.

§ 2.2-2719. Gifts and bequests; exemption from taxation

Gifts and bequests of money, securities, or other property to the Fund, and the interest or income therefrom, shall be deemed gifts to the Commonwealth, and the Fund shall be exempt from all state and local taxes. Unless otherwise restricted by the terms of the gift or bequest, the Foundation may sell, exchange, or otherwise dispose of such gifts and bequests. The proceeds from such transactions shall be deposited to the credit of the Fund. The Foundation may actively solicit private donations for the Fund.

2003, cc. 657, 670.

Article 7 - THE CENTER FOR RURAL VIRGINIA

§ 2.2-2720. The Center for Rural Virginia; purpose

The Center for Rural Virginia, hereinafter referred to as "the Center," is hereby created as an independent nonprofit local entity without political subdivision status, for the purpose of sustaining economic growth in the rural areas of the Commonwealth and lessening the burdens of government through the activities prescribed in subsection B of § 2.2-2723.

2004, cc. 938, 964; 2005, c. 703.

§ 2.2-2721. Center for Rural Virginia Board of Trustees established; membership; terms; vacancies; chairman, vice-chairman, secretary, and other officers as necessary; quorum; meetings

A. The Center shall be governed by a board of trustees consisting of 21 members that include six legislative members, 12 nonlegislative citizen members, and three ex officio members to be appointed as follows: four members of the House of Delegates, to be appointed by the Speaker of

the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two members of the Senate, to be appointed by the Senate Committee on Rules; six nonlegislative citizen members to be appointed by the Speaker of the House of Delegates; four nonlegislative citizen members to be appointed by the Senate Committee on Rules; and two nonlegislative citizen members to be appointed by the Governor, subject to confirmation by the General Assembly. The Lieutenant Governor, or his designee, the Secretary of Commerce and Trade, or his designee, and the Secretary of Agriculture and Forestry, or his designee, shall serve ex officio with voting privileges. Nonlegislative citizen members of the Board shall be citizens of the Commonwealth of Virginia.

B. Legislative members and ex officio members shall serve terms coincident with their terms of office. Initial appointments of nonlegislative citizen members shall be staggered as follows: four members for a term of three years appointed by the Speaker of the House of Delegates; two members for a term of two years appointed by the Senate Committee on Rules; and one member for a term of two years appointed by the Governor. Thereafter, nonlegislative citizen members appointed by the Speaker of the House of Delegates or the Senate Committee on Rules shall be appointed for a term of two years, and nonlegislative citizen members appointed by the Governor shall be appointed for a term of four years. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. All members may be reappointed. However, no nonlegislative citizen member appointed by the Speaker of the House of Delegates or the Senate Committee on Rules shall serve more than four consecutive two-year terms, and no nonlegislative citizen member appointed by the Governor shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment. Vacancies shall be filled in the same manner as the original appointments.

C. The Board of Trustees shall elect a chairman, vice-chairman, secretary, and such other officers as may be necessary from among its membership. A majority of the members shall constitute a quorum. The meetings of the Board shall be held at the call of the chairman or whenever the majority of the members so request.

2004, cc. 938, 964; 2010, cc. 259, 628; 2014, cc. 392, 445.

§ 2.2-2722. Compensation; expenses

Legislative members of the Board shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided from such funds as may be available to the Center.

2004, cc. 938, 964.

§ 2.2-2723. Powers and duties of the Board of Trustees and the Center

A. The Board of Trustees shall have the following powers and duties:

1. Manage, control, maintain, and operate the Center;

2. Take all actions necessary to qualify the Center as exempt from taxation pursuant to § 501(c)(3) of the Internal Revenue Code and operate the Center in accordance with the provisions governing nonstock corporations as set out in Chapter 10 of Title 13.1, provided that, in the event of the dissolution of the Center, assets shall be distributed for one or more exempt purposes within the meaning of § 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the Commonwealth or a local government for a public purpose;

3. Establish bylaws as may be necessary for the governance and conduct of business of the Board;

4. Employ and establish the qualifications and duties, and fix salaries and compensation of staff of the Center from such funds as may be available to the Center;

5. Seek federal funds available to state rural development councils, pursuant to the Farm Security and Rural Investment Act of 2002, P.L. 107-171;

6. Seek, accept, administer, and expend gifts, grants, donations, bequests, and any other funds on behalf of the Center to support and facilitate its work;

7. Accept, administer, and expend donations, bequests, or devises of real and personal property for the endowment of the Center or for any special purpose designated by the donor that is consistent with the purposes of the Center set forth in this article;

8. Have, in addition to its other powers, all the corporate powers given to nonstock corporations by the provisions of Title 13.1. The Board shall also have the power to accept, execute, and administer any trust in which it may have an interest under the terms of the instrument creating the trust;

9. Enter into contracts with respect to the duties and responsibilities imposed upon the Center herein;

10. Report annually concerning the status, needs, and accomplishments of the Center to the Governor and the General Assembly; and

11. Perform any lawful acts necessary or appropriate to carry out the purposes of this article.

B. The Center shall have the following powers and duties:

1. Develop a broad-based constituency to advocate for the interests of rural Virginia in the formulation of the Commonwealth's public policies;

2. Coordinate and facilitate research on rural issues and analyze the effect of public policies and private sector interests on rural communities;

3. Prepare a detailed analysis of rural Virginia economies annually for submission to the Board, together with feasible and appropriate alternatives designed to sustain economic growth in rural areas of the Commonwealth;

4. Facilitate public-private investments in the infrastructure of rural Virginia;

5. Develop programs designed to train local elected officials and community leaders for effective leadership in rural communities;

6. Foster innovative strategies that promote the development and prosperity of rural communities in the Commonwealth;

7. Facilitate the development of incentives and provide a forum for competing interests to allow for job creation and expanded economic opportunities for farm businesses and rural enterprises while ensuring the rights of localities to develop reasonable regulations of such farm businesses and rural enterprises to protect the health, safety, and welfare of residents;

8. Provide for the collection, organization, storage, and dissemination of documents, data, and other information concerning issues relevant to the needs and continuous development of Virginia's rural areas, including technical and research assistance to rural localities in the development and implementation of their strategic plans;

9. Identify potential public and private resources for the Board's consideration and review that may be used to generate additional funds to support and facilitate the Center's work and foster the development of rural communities;

10. Submit to the Board of Trustees such reports regarding the Center's work, including, but not limited to, programs, activities, policy analyses, and financial statements, as may be requested by the Board; and

11. Perform such other acts as may be necessary to accomplish the objectives of this article.

2004, cc. 938, 964; 2005, c. 703; 2010, cc. 797, 833.

§ 2.2-2724. Staffing

The Board shall employ an executive director and such other persons as it deems necessary to assist it in performing its duties as set forth in this article, and, at its pleasure, remove such employees. The Board shall determine the duties of all staff and fix the salaries and compensation of such persons within the amounts allocated therefor from such funds as may be available to the Board.

2004, cc. 938, 964.

Article 8 - MARTIN LUTHER KING, JR LIVING HISTORY AND PUBLIC POLICY CENTER

§§ 2.2-2725 through 2.2-2731. Expired

Expired.

Article 9 - STATE INTEROPERABILITY EXECUTIVE COMMITTEE

§§ 2.2-2732, 2.2-2733. Repealed

Repealed by Acts 2011, cc. 780 and 858, cl. 2, effective April 6, 2011, and Acts 2011, cc. 594 and 681, cl. 2.

Article 10 - SOUTHWEST VIRGINIA CULTURAL HERITAGE FOUNDATION

§ 2.2-2734. Southwest Virginia Cultural Heritage Foundation established; purpose

The Southwest Virginia Cultural Heritage Foundation (the Foundation) is hereby established as a body politic and corporate. The purpose of the Foundation is to encourage the economic development of Southwest Virginia through the expansion of cultural and natural heritage ventures and initiatives related to tourism and other asset-based enterprises, including the Heartwood: Southwest Virginia's Artisan Center, The Crooked Road, 'Round the Mountain, and other related cultural and natural heritage organizations and venues that promote entrepreneurial and employment opportunities.

2011, cc. 521, 548.

§ 2.2-2735. Membership; qualifications; terms; vacancies; officers; compensation

A. The Foundation shall be administered by a board of trustees, consisting of 23 members as follows: two members of the Senate to be appointed by the Senate Committee on Rules; three members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two nonlegislative citizen members who shall be residents of Southwest Virginia and two nonlegislative citizen members who shall be executive directors of either Planning District Commission 1, 2, 3, 4, or 12 or their designees, to be appointed by the Governor; one nonlegislative citizen member who shall be an elected or appointed official of the Town of Abingdon to be appointed by the Governor upon the recommendation, if any, of the Abingdon Town Council; one nonlegislative citizen member who shall be an elected or appointed official of Washington County to be appointed by the Governor upon the recommendation, if any, of the Washington County Board of Supervisors; four nonlegislative citizen members who shall be artisans and members of 'Round the Mountain, who shall be appointed by the Governor upon the recommendation of the executive committee of 'Round the Mountain; and one nonlegislative citizen member who shall represent the Ninth Congressional District and serve as a member of the Virginia Commission for the Arts, to be appointed by the Governor upon the recommendation, if any, of the Executive Director of the Virginia Commission for the Arts. The President of Virginia Highlands Community College or his designee shall serve ex officio with nonvoting privileges. The Chairman of The Crooked Road, the Chairman of 'Round the Mountain, the Chairman of the Friends of Southwest Virginia, the Director of the Virginia Department of Housing and Community Development, the Director of the Virginia Tourism Corporation, and the Executive Director of the Southwest Virginia Higher Education Center or their designees shall serve ex officio with voting privileges.

B. Legislative members and ex officio members of the Foundation board of trustees shall serve terms coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired term. Vacancies shall be filled in the same manner as the original appointments. All members may be reappointed.

C. No House member shall serve more than four consecutive two-year terms, no Senate member shall serve more than two consecutive four-year terms, and no nonlegislative citizen member shall serve more than two consecutive four-year terms. The remainder of any term to which a member is appointed to fill a vacancy shall not constitute a term in determining the member's eligibility for reappointment.

D. Legislative members shall receive such compensation as provided in § 30-19.12. All members of the Foundation shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department of Housing and Community Development.

E. The Foundation shall elect a chairman and a vice-chairman from among its members and may appoint such other officers as it deems necessary. The Foundation shall appoint an executive committee and such other committees as it deems necessary to oversee personnel and other areas related to operations and the achievement of the goals of the Foundation.

2011, cc. 521, 548; 2013, c. 447.

§ 2.2-2736. Powers and duties of the Foundation

A. The Foundation shall have the power and duty to:

1. Accept, execute, and administer any trust in which it may have an interest under the terms of the instrument creating the trust;

2. Establish and administer agreements with public or private agencies in order to achieve its goals;

3. Rent, lease, including the execution of leases with option to purchase, buy, own, acquire, and dispose of such property, real and personal, as the Foundation deems proper to carry out any of the purposes and provisions of this article;

4. Finance, fund, plan, establish, construct, enlarge, extend, equip, update, and maintain buildings, structures, and facilities that are necessary or desirable to achieve its goals;

5. Establish a corporation eligible for exemption from income taxation under § 501(c) of the Internal Revenue Code to assist in carrying out the purposes of the Foundation;

6. Operate, manage, and oversee the retail sales, demonstration, performance, and interpretation of artisan, musical, or other cultural activities, food and visitor services, and other functions as may be necessary or desirable to achieve its goals;

7. Employ and compensate such employees and agents as the Foundation deems necessary. The Foundation may appoint an executive director who shall be authorized to employ such staff as necessary to enable the Foundation to achieve its goals. The Foundation shall determine the duties of such staff and fix salaries and compensation from such funds as may be received;

8. Borrow and seek, accept, and expend gifts, grants, or donations from public or private sources;

9. Manage the operations of any existing or new facility in accordance with the provisions of this article;

10. Facilitate the sustainability of economic development initiatives relating to the cultural and natural heritage of Southwest Virginia by providing financial resources and technical assistance to organizations and venues that contribute to achieving the goals of the Foundation;

11. Serve as a resource and referral center by maintaining and disseminating information about Southwest Virginia cultural and natural heritage efforts and venues;

12. Develop specific goals and initiatives intended to improve the quality of life and entrepreneurial opportunities in Southwest Virginia in coordination with the Virginia Tourism Corporation, the Virginia Department of Housing and Community Development, Southwest Virginia tourism and economic development organizations, local governments, and other entities; and

13. Submit to the Governor and the General Assembly no later than the first day of each regular session of the General Assembly an annual report for publication as a report document in accordance with the procedures established by the Division of Legislative Automated Systems for legislative documents and reports.

B. The Foundation may establish nonprofit, nonstock corporations under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1 as public instrumentalities exercising public and essential governmental functions to assist the Foundation in (i) encouraging the economic development of Southwest Virginia through the expansion of cultural and natural heritage ventures and initiatives related to tourism and other asset-based enterprises, including the Southwest Virginia Artisan Center, The Crooked Road, 'Round the Mountain, and related cultural and natural heritage organizations and venues that promote entrepreneurial and employment opportunities and (ii) conducting other activities useful in carrying out the provisions of this article.

The board of directors of any such corporation shall be composed of the chairman of the Foundation and eight persons appointed by the Foundation. The terms of the members of any corporation established shall be four years.

The Foundation shall require any such corporation to report to it at least annually on its activities.

2011, cc. 521, 548.

§ 2.2-2737. Staffing

The Department of Housing and Community Development shall provide additional staff support to the Foundation. All agencies of the Commonwealth shall provide assistance to the Foundation, upon request.

2011, cc. 521, 548.

Article 11 - VIRGINIA INTERNATIONAL TRADE CORPORATION

§ 2.2-2738. (Effective December 1, 2016) Virginia International Trade Corporation; purpose; membership; meetings

A. The Virginia International Trade Corporation (the Corporation) is established in the executive branch of state government. The purpose of the Corporation shall be to promote international trade in the Commonwealth.

B. The Corporation shall be governed by a board of directors (the Board) composed of 17 members as follows: the Secretaries of Agriculture and Forestry, Commerce and Trade, Finance, Technology, and Transportation, or their designees, serving ex officio with voting privileges, and 12 nonlegislative citizen members appointed by the Governor, subject to confirmation by the General Assembly. The members appointed by the Governor shall have experience as senior management personnel or leaders in the areas of agriculture, finance, development, international business, manufacturing, and trade with at least two having background and experience specific to agriculture. Ex officio members of the Board shall serve terms coincident with their terms of office. Appointments to fill vacancies, other than by expiration of a term, shall be for the unexpired terms. After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of six years. Nonlegislative citizen members shall be citizens of the Commonwealth.

C. The Board shall elect a chairman and a vice-chairman from among its members. The Secretaries of Agriculture and Forestry, Commerce and Trade, Finance, Technology, and Transportation shall not be eligible to serve as chairman or vice-chairman.

D. The Board shall meet at least four times annually and more often if deemed necessary or advisable by the chairman.

E. Members of the Board shall receive no compensation for their services but shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825.

2016, c. 749.

§ 2.2-2739. (Effective December 1, 2016) Appointment of Chief Executive Officer

The Governor, in consultation with the Board, shall appoint a Chief Executive Officer of the Corporation. The Chief Executive Officer shall perform the duties and exercise the functions the Corporation assigns to him. He shall receive a salary for his services to be paid by the Corporation subject to the approval of the Governor. The Chief Executive Officer shall employ or retain such agents or employees subordinate to him as may be necessary to fulfill the duties of the

Corporation as conferred upon the Chief Executive Officer. Employees of the Corporation, including the Chief Executive Officer, shall be eligible for membership in the Virginia Retirement System and participation in all of the health and related insurance and other benefits, including premium conversion and flexible benefits, available to state employees as provided by law.

2016, c. 749.

§ 2.2-2740. (Effective April 1, 2017) Powers and duties of the Corporation

The Corporation shall have the power and duty to:

1. Periodically assess (i) product and services promotion activities with the Virginia Economic Development Partnership Authority and the Department of Agriculture and Consumer Services and (ii) suggestions from relevant industries on ways to increase exports of Virginia products;

2. Ensure the preparation and execution of effective international trade development marketing and promotional programs, inclusive of both international export and international import programs when economic benefit accrues to Virginia's economy and businesses;

3. Make available to businesses across the Commonwealth, in conjunction and cooperation with business trade associations, chambers of commerce, universities, and other public and private groups, international trade development programs and services;

4. Encourage and solicit private sector involvement, support, and funding for international trade development in the Commonwealth;

5. Encourage the coordination of international trade development efforts of public institutions, business associations, chambers of commerce, and private industry and collect and maintain data on the development and utilization of international trade development capabilities;

6. Offer a program for the issuance of international documentation for companies located in the Commonwealth if no federal agency or other regulatory body or issuing entity will provide international documentation in a form deemed necessary for international commerce;

7. Adopt, amend, and repeal bylaws, rules, and regulations, not inconsistent with this article, for the administration and regulation of its affairs, to carry into effect the powers and purposes of the Corporation, and for the conduct of its business;

8. Maintain an office at any place within or without the Commonwealth that it designates;

9. Make and execute contracts and all other instruments and agreements necessary or convenient for the performance of its duties and the exercise of its owners and functions under this article;

10. Employ officers, employees, agents, advisers, and consultants, including without limitation financial advisers and other technical advisers and public accountants, and, the provisions of any other law to the contrary notwithstanding, to determine their duties and compensation without the approval of any other agency or instrumentality;

11. Sell, convey, mortgage, pledge, lease, exchange, transfer, and otherwise dispose of all or any part of its properties and assets;

12. Procure insurance, in amounts and from insurers of its choice, or provide self-insurance, against any loss, cost, or expense in connection with its property, assets, or activities, including insurance or self-insurance against liability for its acts or the acts of its directors, employees, or agents and for the indemnification of the members of its Board and its employees and agents;

13. Establish and revise, amend and repeal, and charge and collect fees and charges in connection with any activities or services of the Corporation;

14. Make grants with any funds of the Corporation available for this purpose;

15. Develop policies and procedures generally applicable to the procurement of goods, services, and construction based on competitive principles;

16. Raise money in the corporate, nonprofit, and nonstate communities to finance the Corporation's activities;

17. Receive and accept from any source aid, grants, and contributions of money, property, labor, or other things of value to be held, used, and applied to carry out the purposes of this article subject to the conditions upon which the aid, grants, or contributions are made;

18. Enter into agreements with any department, agency, or instrumentality of the United States, the Commonwealth, the District of Columbia, or any state for purposes consistent with its mission;

19. Maintain accounts and records as prescribed by the Auditor of Public Accounts, who shall annually audit the accounts of the Corporation; and

20. Do any acts necessary or convenient to the exercise of the powers granted or reasonably implied by this article and not otherwise inconsistent with state law.

2016, c. 749.

§ 2.2-2741. (Effective April 1, 2017) Grants from the Commonwealth

The Commonwealth may make grants of money or property to the Corporation for the purpose of enabling it to carry out its purposes and for the exercise of its duties. This section shall not be construed to limit any other power the Commonwealth may have to make grants to the Corporation.

2016, c. 749.

§ 2.2-2742. Exemption from taxation

The Corporation shall be performing an essential governmental function in the exercise of the powers conferred upon it by this article. Accordingly, the Corporation shall not be required to pay any taxes or assessments upon any project or any property or upon any operations of the Corporation or the income therefrom. Agents, lessees, sublessees, or users of tangible personal prop-

erty owned by or leased to the Corporation also shall not be required to pay any sales or use tax upon such property or the revenue derived therefrom.

2016, c. 749.

§ 2.2-2743. Exemptions from personnel and procurement procedures
The provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and the Virginia Personnel Act (§ 2.2-2900 et seq.) shall not apply to the Corporation.

2016, c. 749.

Part E - STATE OFFICERS AND EMPLOYEES

Chapter 28 - GENERAL PROVISIONS

§ 2.2-2800. Disability to hold state office
No person shall be capable of holding any office of honor, profit or trust under the Constitution of Virginia, who (i) holds any office or post of profit, trust, or emolument, civil or military, legislative, executive, or judicial, under the government of the United States; (ii) is in the employment of such government; or (iii) receives from it in any way any emolument whatever. The acceptance of any office, post, trust, or emolument, or the acceptance of any emolument whatever under the government of the United States, shall, ipso facto, vacate any office, or post of profit, trust or emolument under the government of the Commonwealth or under any county, city, or town thereof.

Code 1950, § 2-27; 1966, c. 677, § 2.1-30; 2001, c. 844.

§ 2.2-2801. Disability to hold state office; exceptions
A. Section 2.2-2800 shall not be construed to prevent:

1. Members of Congress from acting as visitors of the University of Virginia or the Virginia Military Institute, or from holding offices in the militia;

2. United States commissioners or United States census enumerators, supervisors, or the clerks under the supervisor of the United States census, or fourth-class or third-class postmasters, or United States caretakers of the Virginia National Guard, from acting as notaries, school board selection commission members, or supervisors, or from holding any district office under the government of any county, or the office of councilman of any town or city in the Commonwealth;

3. Any United States rural mail carrier, or star route mail carrier from being appointed and acting as notary public or holding any county or district office;

4. Any civilian employee of the United States government from being appointed and acting as notary public;

5. Any United States commissioners or United States park commissioners from holding the office of commissioner in chancery, bail commissioner, jury commissioner, commissioner of accounts,

assistant commissioner of accounts, substitute or assistant civil justice, or assistant judge of a municipal court of any city or assistant judge of a juvenile and domestic relations district court of any city, or judge of any county court or juvenile and domestic relations district court of any county, or the municipal court or court of limited jurisdiction, by whatever name designated, of any incorporated town;

6. Any person employed by, or holding office or a post of profit, trust or emolument, civil, legislative, executive or judicial, under the government of the United States, from being a member of the militia or holding office therein, or from being a member or director of any board, council, commission or institution of the Commonwealth who serves without compensation except one who serves on a per diem compensation basis;

7. Foremen, quartermen, leading men, artisans, clerks or laborers, employed in any navy yard or naval reservation in Virginia from holding any office under the government of any city, town or county in the Commonwealth;

8. Any United States government clerk from holding any office under the government of any town or city;

9. Any person holding an office under the United States government from holding a position under the management and control of the State Board of Health;

10. Any state federal director of the Commonwealth in the employment service of the United States Department of Labor from holding the office of Commissioner of Labor of the Commonwealth;

11. Clerks and employees of the federal government engaged in the departmental service in Washington from acting as school trustees;

12. Any person, who is otherwise eligible, from serving as a member of the governing body or school board of any county, city or town, or as a member of any public body who is appointed by such governing body or school board, or as an appointive officer or employee of any county, city or town or the school board thereof;

13. Game management agents of the United States Fish and Wildlife Service or United States deputy game wardens from acting as special conservation police officers;

14. Any appointive state or local official or employee from serving, with compensation, on an advisory board of the federal government;

15. Any state or local law-enforcement officer from serving as a United States law-enforcement officer; however, this subdivision shall not be construed to authorize any law-enforcement officer to receive double compensation;

16. Any United States law-enforcement officer from serving as a state or local law-enforcement officer when requested by the chief law-enforcement officer of the subject jurisdiction; however,

this subdivision shall not be construed to authorize any law-enforcement officer to receive double compensation;

17. Any attorney for the Commonwealth or assistant attorney for the Commonwealth from serving as or performing the duties of a special assistant United States attorney or assistant United States attorney; however, this subdivision shall not be construed to authorize any attorney for the Commonwealth or assistant attorney for the Commonwealth to receive double compensation;

18. Any assistant United States attorney from serving as or performing the duties of an assistant attorney for the Commonwealth when requested by the attorney for the Commonwealth of the subject jurisdiction; however, this subdivision shall not be construed to authorize any assistant United States attorney to receive double compensation;

19. Any elected state or local official from serving, without compensation, on an advisory board of the federal government; however, this subdivision shall not be construed to prohibit reimbursement for actual expenses;

20. Sheriffs' deputies from patrolling federal lands pursuant to contracts between federal agencies and local sheriffs;

21. State judicial officers from performing acts or functions with respect to United States criminal proceedings when such acts or functions are authorized by federal law to be performed by state judicial officers; or

22. Any member of the Armed Forces of the United States from serving on the Virginia Military Advisory Council or the Virginia Offshore Wind Development Authority.

B. Nor shall § 2.2-2800 be construed to exclude:

1. A person to whom a pension has been granted by the United States or who receives retirement compensation in any manner from the United States, or any person receiving or entitled to receive benefits under the Federal Old-Age and Survivors' Insurance System or under the Federal Railroad Retirement Act.

2. Officers or soldiers on account of the recompense they may receive from the United States when called out in actual duty.

Code 1950, § 2-29; 1950, p. 101; 1952, c. 120; 1958, c. 414; 1960, c. 39; 1962, c. 247; 1966, c. 677, § 2.1-33; 1968, c. 788; 1970, c. 745; 1971, Ex. Sess., cc. 137, 143; 1972, cc. 356, 405; 1975, c. 575; 1978, cc. 83, 420; 1983, c. 539; 1984, c. 110; 1985, c. 77; 1988, cc. 361, 901; 2001, cc. 577, 844; 2002, c. 676; 2011, c. 17; 2014, c. 543.

§ 2.2-2802. Exception as to public officer or employee engaging in war service or called to active duty with the armed forces

No state, county or municipal officer or employee shall forfeit his title to office or position or vacate the same by reason of either engaging in the war service of the United States when called

forth by the Governor pursuant to the provisions of § 44-75.1, or when called to active duty in the armed forces of the United States. Any such officer or employee who, voluntarily or otherwise, enters upon such war service or is called to service may notify the officer or body authorized by law to fill vacancies in his office, of such fact, and thereupon be relieved from the duties of his office or position during the period of such service. The officer or body authorized to fill vacancies shall designate some suitable person to perform the duties of such office as acting officer during the period the regular officer is engaged in such service, and during such period the acting officer shall be vested with all the powers, authority, rights and duties of the regular officer for whom he is acting.

Code 1950, § 2-28; 1950, p. 242, § 2-27.1; 1964, c. 227; 1966, c. 677, § 2.1-31; 2001, c. 844.

§ 2.2-2803. Exception as to public officer or employee serving in the Selective Service System of the United States

No state, county or municipal officer or employee shall forfeit or vacate his office or position, by reason of serving or of having served as an officer, member, agent or employee, or in any other position or capacity, in the Selective Service System of the United States.

No person shall be ineligible to hold any state, county or municipal office or position by reason of being engaged in service in Virginia in the Selective Service System of the United States.

1952, Ex. Sess., c. 21, § 2-27.2; 1966, c. 677, § 2.1-32; 2001, c. 844.

§ 2.2-2804. Selective Service compliance

Any person who has failed to meet the federal requirement to register for the Selective Service shall be ineligible for employment by or service for the Commonwealth, or a political subdivision of the Commonwealth, including all boards and commissions, departments, agencies, institutions, and instrumentalities. A person shall not be denied employment under this section by reason of failure to present himself for and submit to the federal registration requirement if: (i) the requirement for the person to so register has terminated or become inapplicable to the person and (ii) the person shows by a preponderance of the evidence that the failure of the person to register was not a knowing and willful failure to register.

1999, c. 434, § 2.1-32.1; 2001, c. 844.

§ 2.2-2805. Members of armed forces; reserve forces

No person shall, by reason of being a member of the armed forces of the United States, whether active or reserved, or by reason of being a retired officer of the armed forces of the United States and receiving pay therefor, be disqualified from holding any office under the government of the Commonwealth, or under any county, city, town, magisterial district or school district thereof.

Code 1950, § 2-30; 1966, c. 677, § 2.1-34; 2001, c. 844.

§ 2.2-2806. Holding other office by officers of state institutions

No person serving as a member of the governing board of any institution, supported in whole or in part by funds paid out of the state treasury, or as rector of such institution, or as president or chairman of the governing board thereof, shall hold, during his term of office, any other office or position with the institution on the board of which he is serving. If any such person accepts any such office or position, the acceptance shall ipso facto vacate his office as a member of such board. Nothing in this section shall be construed to prevent members of boards of agricultural colleges from doing field or extension work.

Code 1950, § 2-31; 1966, c. 677, § 2.1-35; 2001, c. 844.

§ 2.2-2807. Prohibition against holding two elected offices simultaneously; exceptions

No person shall hold more than one elected office at the same time. This section shall apply to every office elected by the qualified voters of the Commonwealth or any political subdivision or part thereof.

The qualification for and taking of the oath for a second elected office by any person shall operate to vacate any other elected office held by him.

This section shall not be construed to repeal or affect provisions of law authorizing the sharing of elected offices by two or more jurisdictions. Any person serving in more than one elected office on July 1, 1993, shall be entitled to complete the terms for which he was elected.

A person may serve as a Presidential elector while holding any other elective office of the Commonwealth or any political subdivision or part thereof, and this section shall not be construed to prohibit such dual officeholding.

1993, cc. 621, 781, § 2.1-37.01; 2001, c. 844.

§ 2.2-2808. Acts under color of office; contracts in violation of chapter

All judgments given, and all acts executed or done by any person by authority or color of any office or post, or the deputation thereof, before his removal therefrom, shall be as valid as they would be if this chapter had not been enacted; but every contract or security made or obtained in violation of this chapter shall be void.

Code 1950, § 2-33; 1966, c. 677, § 2.1-37; 2001, c. 844.

§ 2.2-2809. Bonds of certain officers required; condition; form; effect of failure to give bond; additional bonds

Certain officers designated by the Governor shall each give bond with sufficient surety to the Commonwealth. The bond shall be conditioned upon the faithful discharge of the duties of his office in such penalty as fixed by the Governor.

The form of bond shall be prescribed by the Attorney General and when given by such officer shall bear the certification of the Attorney General and the approval of the Governor.

If the bond required of such officer is not given or not deemed to be proper within thirty days after his appointment, the appointment of such officer shall be deemed void and his office shall be deemed vacant.

Whenever in the opinion of the Governor it is necessary for the protection of the public interest, that a new bond or a bond in addition to the one already given by such officer, it shall be given within a reasonable time as prescribed by the Governor after the officer has been notified of the requirement. If the officer fails or refuses to give the new or additional bond required, his office shall be deemed vacant.

1980, c. 119, § 2.1-11.1; 2001, c. 844.

§ 2.2-2810. Premiums on such bonds

The Comptroller may pay out of the state treasury the premiums on the surety bonds of all state officials who are required to be bonded, for a period of more than one year when a discount for advanced payment of the premiums may be obtained under the rates, and regulations adopted by the State Corporation Commission according to law.

If any such surety bond is cancelled prior to its expiration, the portion of the premium to be returned shall be calculated on the basis of the regular annual rate of premiums for the duration of the bond as such refunds are prescribed by the rates, and regulations adopted by the State Corporation Commission according to law.

Code 1950, § 2-8; 1966, c. 677, § 2.1-12; 2001, c. 844.

§ 2.2-2811. Where bonds filed

The bonds of all officers and employees of all the departments, institutions, agencies, boards, commissions and authorities of the Commonwealth, except the Department of Accounts, shall, after being recorded by the Secretary of the Commonwealth, as required by § 49-12, be transmitted to the Comptroller and be filed in the office of the Comptroller.

The bonds of all officers and employees in the Department of Accounts shall be filed in the office of the Secretary of the Commonwealth. Nothing in this section shall be construed to apply to notaries public, nor to commissioners of the revenue, attorneys for the Commonwealth, clerks of courts and treasurers of the counties and cities who are covered by other sections of the Code; nor to other similar officers of a purely local character.

Code 1950, § 2-11; 1966, cc. 249, 677, § 2.1-15; 2001, c. 844.

§ 2.2-2812. Employment of personnel

A. Notwithstanding any other provision of law to the contrary, the agency administrator of each executive branch agency, except those that by law are appointed by their respective boards, shall employ the personnel necessary for the proper performance of all responsibilities of their agency subject to the Virginia Personnel Act (§ 2.2-2900 et seq.) and within the limits of appropriations made therefor by law.

B. Notwithstanding any other provision of law to the contrary, any employee of an agency in the executive branch of state government, who is (i) promoted within the same agency to a higher position classification and (ii) required to serve a period of time in a probationary status incident to such promotion, shall be offered to be returned to such employee's previous classified position or an equivalent position for which a vacancy exists if, for any reason other than misconduct, the probationary period of employment is not satisfied or completed.

1984, c. 744, § 2.1-20.01; 1997, c. 31; 2001, c. 844; 2011, c. 259.

§ 2.2-2813. Definitions; compensation and expense payments from state funds for service on collegial bodies

A. As used in this chapter:

"Compensation" means any amount paid in addition to reimbursement for expenses.

"Expenses" means all reasonable and necessary expenses incurred in the performance of duties.

"Salary" means a fixed compensation for services, paid to part-time and full-time employees on a regular basis.

B. Subject to the provisions of subsections C and D, members of boards, commissions, committees, councils and other collegial bodies, who are appointed at the state level, shall be compensated at the rate of $50 per day, unless a different rate of compensation is specified by statute for such members, plus expenses for each day or portion thereof in which the member is engaged in the business of that body. The funding for the compensation and reimbursement of expenses of members shall be provided by the collegial body or, if funds are not appropriated to the collegial body for such purpose, by the entity that supports the work of the collegial body. The collegial body or supporting agency shall reimburse the Clerk of the Senate and the Clerk of the House of Delegates for expenditures incurred in providing compensation and expenses of their respective members for service on the collegial body.

C. Full-time employees of the Commonwealth or any of its local political subdivisions, including full-time faculty members of public institutions of higher education, shall be limited to reimbursement for such employee's expenses.

D. No member shall receive total compensation for a single day of more than one payment of the highest per diem amount specified in subsection B for attending meetings and for services performed that day for all boards, commissions, or other similar bodies, of which such person is a member, including all committees, subcommittees, or other related entities of such boards, commissions, or other similar bodies. Whenever a member performs services or attends two or more meetings in a single day for two or more boards, commissions, etc., compensation and expenses shall be prorated among the bodies served.

E. A nonlegislative member of a state board, commission, committee, council, or other state collegial body, which body is required by law to meet at least three times per year, shall, for any

compensation or expense reimbursement from funds drawn from the state treasury, be required to participate in the Electronic Data Interchange Program administered or authorized by the Department of Accounts as a condition of accepting such appointment.

1980, c. 728, §§ 2.1-20.2, 2.1-20.3; 1981, c. 181; 1998, cc. 790, 872; 2001, cc. 227, 844; 2003, cc. 814, 821; 2011, c. 495.

§ 2.2-2814. How salaries, expenses and other allowances paid; time of payment

The salaries, expenses and other allowances, including mileage, mentioned in this chapter, Chapter 1 (§ 2.2-100 et seq.) of this title and Chapter 1.1 (§ 30-19.11 et seq.) of Title 30 shall, except where otherwise specifically provided, be paid out of the state treasury after being duly audited, and the Comptroller shall draw his warrants on the State Treasurer for the payment thereof. Salaries shall be paid every two weeks, semimonthly or monthly, at the discretion of the Comptroller, upon such dates as the Comptroller may prescribe. Expenses shall be paid when they have been incurred, and the other allowances shall be paid when the services have been rendered or the travel has been performed however, members of the General Assembly and others traveling to the seat of government who would be entitled to mileage for traveling home may receive such mileage before going home.

Code 1950, §§ 14-1, 14-27; 1962, c. 547; 1964, c. 386, § 14.1-1; 1998, c. 872, § 2.1-20.5; 2001, c. 844.

§ 2.2-2815. Increase in salaries

The salary of no state officer or employee payable by the Commonwealth and not specifically fixed by law shall be increased, or authorized to be increased, without the written consent of the Governor.

The salary of no officer or employee of any state institution, board, commission or agency payable by the Commonwealth and not specifically fixed by law, shall be increased, or authorized to be increased, without prior written authorization of such board or commission and the written consent of the Governor.

Any violation of this section shall constitute misfeasance in office. Nothing herein shall apply to teachers in the elementary or secondary schools of the Commonwealth or to employees receiving compensation not in excess of $100 per month.

Code 1950, § 14-2; 1964, c. 386, § 14.1-2; 1998, c. 872, § 2.1-20.6; 2001, c. 844.

§ 2.2-2816. Liability of salary of officer for debt he owes Commonwealth; how enforced; when officer's right to file petition barred

A. Whenever any officer, other than one whose office is created by the Constitution of Virginia, is indebted to the Commonwealth for money collected by him or improperly drawn by him or upon his order from the state treasury during his term of office and, after payment of such indebtedness is demanded by the Comptroller, such officer continues in default, the Comptroller shall not issue his warrant for, nor shall the State Treasurer pay, any part of the salary due, or to become due, to

such officer until he has made good his default. He may, however, file his petition in the Circuit Court of the City of Richmond against the Comptroller, asserting his claim to his salary, and asking for payment thereof. The Comptroller shall answer the petition, and the proceedings shall be held according to the provisions of Article 18 (§ 8.01-192 et seq.) of Chapter 3 of Title 8.01 and § 8.01-255. If it is found that the petitioner is indebted, the Commonwealth shall be credited on his salary then due with the amount of such indebtedness and if, after such credit is given, there is a balance in his favor, judgment shall be rendered on his behalf. If the indebtedness exceeds his salary then due, judgment for the excess shall be rendered against him and the amount thereof, unless sooner paid, shall be credited to the Commonwealth on his salary thereafter becoming due. The Comptroller shall issue his warrant on the State Treasurer for the payment of any judgment rendered on behalf of the petitioner. In the proceeding by petition the Attorney General shall represent the Commonwealth, unless he is interested, in which case the Comptroller shall employ other counsel to represent the Commonwealth.

B. If the officer fails to file a petition under this section within twelve months after payment of any installment of his salary is withheld, his right to file the petition shall be barred. In such case the Comptroller shall credit the Commonwealth on the officer's salary with the amount of his indebtedness, and make that fact appear on the books of his office.

Code 1950, §§ 14-3, 14-4; 1964, cc. 386, §§ 14.1-3, 14.1-4; 1998, c. 872, § 2.1-20.7; 2001, c. 844.

§ 2.2-2817. Defense of employees

Notwithstanding any other law, if any state employee, as defined in this chapter, is investigated for a crime, arrested or indicted, or otherwise prosecuted on any charge, arising out of any act committed in the discharge of his official duties, the state agency, board, or other employer of such state employee, upon a preliminary finding by such agency, board or employer that (i) the employee did not violate any law, ordinance or regulation as a result of the act in question and (ii) the employee will not be terminated from employment as a result of such act, may employ special counsel approved by the Attorney General to defend such person. The reasonable compensation for special counsel employed, pursuant to this section, shall, subject to the approval of the Attorney General, be paid out of the funds appropriated for the state agency, board, or other employer of such state employee.

2000, c. 1030, § 2.1-20.1:8; 2001, c. 844.

§ 2.2-2817.1. State agencies to establish alternative work schedules; reporting requirement

A. In accordance with the statewide telecommuting and alternative work schedule policy, to be developed by the Secretary of Administration pursuant to § 2.2-203.1, the head of each state agency shall establish a telecommuting and alternative work policy under which eligible employees of such agency may telecommute, participate in alternative work schedules, or both, to the maximum extent possible without diminished employee performance or service delivery. The policy shall identify types of employees eligible for telecommuting and alternative work schedules, the broad categories of positions determined to be ineligible for telecommuting and the

justification therefor, any benefits of telecommuting including the use of alternate work locations that are separate from the agency's central workplace, and any benefits of using alternative work schedules. The policy shall promote use of Commonwealth information technology assets where feasible but may allow for eligible employees to use computers, computing devices, or related electronic equipment not owned or leased by the Commonwealth to telecommute, if such use is technically and economically practical, and so long as such use meets information security standards as established by the Virginia Information Technologies Agency, or receives an exception from such standards approved by the CIO of the Commonwealth or his designee. The policy shall be updated periodically as necessary.

B. The head of each agency shall set annual percentage targets for the number of positions eligible for alternative work schedules. By July 1, 2009, each state agency shall have a goal of not less than 25 percent of its eligible workforce participating in alternative work schedules. By January 1, 2010, each state agency, except the Department of State Police, shall have a goal of not less than 20 percent of its eligible workforce telecommuting.

C. The head of each state agency shall annually report to the (i) Secretary of Administration or his designee on the status and efficiency of telecommuting and participation in alternative work schedules and (ii) Secretary of Technology or his designee concerning specific budget requests for information technology, software, telecommunications connectivity (i.e., broadband Internet access, additional telephone lines, and online collaborative tools), or other equipment or services needed to increase opportunities for telecommuting and participation in alternate work locations.

D. As used in this section:

"Alternate work locations" means approved locations other than the employee's central workplace where official state business is performed. Such locations may include, but not be limited to the home of an employee and satellite offices.

"Alternative work schedule" means schedules that differ from the standard workweek, 40-hour workweek schedule, if such schedules are deemed to promote efficient agency operations. Alternative work schedules may include, but not be limited to, four 10-hour days, rotational shifts, and large-scale job sharing.

"Central workplace" means an employer's place of work where employees normally are located.

"Telecommuting" means a work arrangement in which supervisors direct or permit employees to perform their usual job duties away from their central workplace at least one day per week and in accordance with work agreements.

"Work agreement" means a written agreement between the employer and employee that details the terms and conditions of an employee's work away from his central workplace.

2001, c. 405, § 2.1-20.1:9; 2004, cc. 701, 755; 2005, c. 421; 2006, c. 137; 2007, c. 716; 2008, cc. 374, 375; 2009, c. 180.

§ 2.2-2817.2. Employees of the University of Virginia Medical Center

The University of Virginia Medical Center, hereafter referred to as the Medical Center, may purchase basic group life, accidental death and dismemberment, and disability insurance policies covering in whole or in part any of its employees. In addition, the Medical Center may establish, administer and make available to employees a program of optional insurance, including life, accidental death and dismemberment, and disability insurance. Employees of the Medical Center covered under the aforesaid basic insurance policies purchased by the Medical Center shall not be covered by the insurance program established pursuant to § 51.1-501 or be considered "eligible employees" under § 51.1-1100, unless the University of Virginia Board of Visitors, or a duly authorized agent or representative of the Board, purchases such insurance policies from the Virginia Retirement System. Nor shall they be required to present at their own expense evidence of insurability satisfactory to an insurance company upon changing from one form of coverage to another form of coverage provided pursuant to this section. Chapter 5 of Title 51.1 (§ 51.1-500 et seq.) shall not apply to any insurance coverage offered by the Medical Center except that the provisions of §§ 51.1-510 and 51.1-511 shall apply to such insurance coverage; provided that any administrative or ministerial functions performed by or on behalf of the Board of the Virginia Retirement System under §§ 51.1-510 and 51.1-511 shall be performed by the Medical Center.

Notwithstanding the definition of "state employee" contained in § 51.1-124.3, all employees of the Medical Center may be enrolled in a health care plan other than that provided for in § 2.2-2818 at the election of the Medical Center and subject to the review and approval of the Board of Visitors of the University of Virginia; however, any Medical Center employee who was first employed by the Medical Center prior to July 1, 1996, and who had not been classified as a health care provider under the provisions of § 51.1-502.1 prior to July 1, 1996, shall be provided the option of enrolling in a health care plan elected by the Medical Center or enrolling in the health care plan established pursuant to § 2.2-2818 until such time as the University of Virginia Board of Visitors may determine that it is not in the best interest of the University to continue to provide that option to any employees of the Medical Center. If the Board of Visitors determines that such health plan option will not continue to be provided, any Medical Center employees who must reenroll in a different health plan shall be allowed to do so with a waiver of preexisting medical conditions for the employees and, if applicable, their spouses and dependents.

Subject to such eligibility criteria as it may establish, the Medical Center may make available to any of its employees the insurance programs established pursuant to this section, including health plan coverage, notwithstanding the fact that such employees may not be eligible for participation in any retirement plan established pursuant to § 51.1-126.3 or the retirement system established pursuant to Chapter 1 (§ 51.1-124.1 et seq.) of this title.

The eligibility of any employee of the Medical Center for participation in any insurance program established pursuant to this section shall not of itself render such employees eligible for participation in the Virginia Retirement System or any optional retirement program.

2001, c. 694, § 2.1-20.1:9.1.

§ 2.2-2818. Health and related insurance for state employees

A. The Department of Human Resource Management shall establish a plan, subject to the approval of the Governor, for providing health insurance coverage, including chiropractic treatment, hospitalization, medical, surgical and major medical coverage, for state employees and retired state employees with the Commonwealth paying the cost thereof to the extent of the coverage included in such plan. The same plan shall be offered to all part-time state employees, but the total cost shall be paid by such part-time employees. The Department of Human Resource Management shall administer this section. The plan chosen shall provide means whereby coverage for the families or dependents of state employees may be purchased. Except for part-time employees, the Commonwealth may pay all or a portion of the cost thereof, and for such portion as the Commonwealth does not pay, the employee, including a part-time employee, may purchase the coverage by paying the additional cost over the cost of coverage for an employee.

Such contribution shall be financed through appropriations provided by law.

B. The plan shall:

1. Include coverage for low-dose screening mammograms for determining the presence of occult breast cancer. Such coverage shall make available one screening mammogram to persons age 35 through 39, one such mammogram biennially to persons age 40 through 49, and one such mammogram annually to persons age 50 and over and may be limited to a benefit of $50 per mammogram subject to such dollar limits, deductibles, and coinsurance factors as are no less favorable than for physical illness generally.

The term "mammogram" shall mean an X-ray examination of the breast using equipment dedicated specifically for mammography, including but not limited to the X-ray tube, filter, compression device, screens, film, and cassettes, with an average radiation exposure of less than one rad mid-breast, two views of each breast.

In order to be considered a screening mammogram for which coverage shall be made available under this section:

a. The mammogram shall be (i) ordered by a health care practitioner acting within the scope of his licensure and, in the case of an enrollee of a health maintenance organization, by the health maintenance organization provider; (ii) performed by a registered technologist; (iii) interpreted by a qualified radiologist; and (iv) performed under the direction of a person licensed to practice medicine and surgery and certified by the American Board of Radiology or an equivalent examining body. A copy of the mammogram report shall be sent or delivered to the health care practitioner who ordered it;

b. The equipment used to perform the mammogram shall meet the standards set forth by the Virginia Department of Health in its radiation protection regulations; and

c. The mammography film shall be retained by the radiologic facility performing the examination in accordance with the American College of Radiology guidelines or state law.

2. Include coverage for postpartum services providing inpatient care and a home visit or visits that shall be in accordance with the medical criteria, outlined in the most current version of or an official update to the "Guidelines for Perinatal Care" prepared by the American Academy of Pediatrics and the American College of Obstetricians and Gynecologists or the "Standards for Obstetric-Gynecologic Services" prepared by the American College of Obstetricians and Gynecologists. Such coverage shall be provided incorporating any changes in such Guidelines or Standards within six months of the publication of such Guidelines or Standards or any official amendment thereto.

3. Include an appeals process for resolution of complaints that shall provide reasonable procedures for the resolution of such complaints and shall be published and disseminated to all covered state employees. The appeals process shall be compliant with federal rules and regulations governing nonfederal, self-insured governmental health plans. The appeals process shall include a separate expedited emergency appeals procedure that shall provide resolution within time frames established by federal law. For appeals involving adverse decisions as defined in § 32.1-137.7, the Department shall contract with one or more independent review organizations to review such decisions. Independent review organizations are entities that conduct independent external review of adverse benefit determinations. The Department shall adopt regulations to assure that the independent review organization conducting the reviews has adequate standards, credentials and experience for such review. The independent review organization shall examine the final denial of claims to determine whether the decision is objective, clinically valid, and compatible with established principles of health care. The decision of the independent review organization shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, and (iii) be final and binding if consistent with law and policy.

Prior to assigning an appeal to an independent review organization, the Department shall verify that the independent review organization conducting the review of a denial of claims has no relationship or association with (i) the covered person or the covered person's authorized representative; (ii) the treating health care provider, or any of its employees or affiliates; (iii) the medical care facility at which the covered service would be provided, or any of its employees or affiliates; or (iv) the development or manufacture of the drug, device, procedure or other therapy that is the subject of the final denial of a claim. The independent review organization shall not be a subsidiary of, nor owned or controlled by, a health plan, a trade association of health plans, or a professional association of health care providers. There shall be no liability on the part of and no cause of action shall arise against any officer or employee of an independent review organization for any actions taken or not taken or statements made by such officer or employee in good faith in the performance of his powers and duties.

4. Include coverage for early intervention services. For purposes of this section, "early intervention services" means medically necessary speech and language therapy, occupational therapy, physical

therapy and assistive technology services and devices for dependents from birth to age three who are certified by the Department of Behavioral Health and Developmental Services as eligible for services under Part H of the Individuals with Disabilities Education Act (20 U.S.C. § 1471 et seq.). Medically necessary early intervention services for the population certified by the Department of Behavioral Health and Developmental Services shall mean those services designed to help an individual attain or retain the capability to function age-appropriately within his environment, and shall include services that enhance functional ability without effecting a cure.

For persons previously covered under the plan, there shall be no denial of coverage due to the existence of a preexisting condition. The cost of early intervention services shall not be applied to any contractual provision limiting the total amount of coverage paid by the insurer to or on behalf of the insured during the insured's lifetime.

5. Include coverage for prescription drugs and devices approved by the United States Food and Drug Administration for use as contraceptives.

6. Not deny coverage for any drug approved by the United States Food and Drug Administration for use in the treatment of cancer on the basis that the drug has not been approved by the United States Food and Drug Administration for the treatment of the specific type of cancer for which the drug has been prescribed, if the drug has been recognized as safe and effective for treatment of that specific type of cancer in one of the standard reference compendia.

7. Not deny coverage for any drug prescribed to treat a covered indication so long as the drug has been approved by the United States Food and Drug Administration for at least one indication and the drug is recognized for treatment of the covered indication in one of the standard reference compendia or in substantially accepted peer-reviewed medical literature.

8. Include coverage for equipment, supplies and outpatient self-management training and education, including medical nutrition therapy, for the treatment of insulin-dependent diabetes, insulin-using diabetes, gestational diabetes and noninsulin-using diabetes if prescribed by a health care professional legally authorized to prescribe such items under law. To qualify for coverage under this subdivision, diabetes outpatient self-management training and education shall be provided by a certified, registered or licensed health care professional.

9. Include coverage for reconstructive breast surgery. For purposes of this section, "reconstructive breast surgery" means surgery performed on and after July 1, 1998, (i) coincident with a mastectomy performed for breast cancer or (ii) following a mastectomy performed for breast cancer to reestablish symmetry between the two breasts. For persons previously covered under the plan, there shall be no denial of coverage due to preexisting conditions.

10. Include coverage for annual pap smears, including coverage, on and after July 1, 1999, for annual testing performed by any FDA-approved gynecologic cytology screening technologies.

11. Include coverage providing a minimum stay in the hospital of not less than 48 hours for a patient following a radical or modified radical mastectomy and 24 hours of inpatient care following a total mastectomy or a partial mastectomy with lymph node dissection for treatment of breast cancer. Nothing in this subdivision shall be construed as requiring the provision of inpatient coverage where the attending physician in consultation with the patient determines that a shorter period of hospital stay is appropriate.

12. Include coverage (i) to persons age 50 and over and (ii) to persons age 40 and over who are at high risk for prostate cancer, according to the most recent published guidelines of the American Cancer Society, for one PSA test in a 12-month period and digital rectal examinations, all in accordance with American Cancer Society guidelines. For the purpose of this subdivision, "PSA testing" means the analysis of a blood sample to determine the level of prostate specific antigen.

13. Permit any individual covered under the plan direct access to the health care services of a participating specialist (i) authorized to provide services under the plan and (ii) selected by the covered individual. The plan shall have a procedure by which an individual who has an ongoing special condition may, after consultation with the primary care physician, receive a referral to a specialist for such condition who shall be responsible for and capable of providing and coordinating the individual's primary and specialty care related to the initial specialty care referral. If such an individual's care would most appropriately be coordinated by such a specialist, the plan shall refer the individual to a specialist. For the purposes of this subdivision, "special condition" means a condition or disease that is (i) life-threatening, degenerative, or disabling and (ii) requires specialized medical care over a prolonged period of time. Within the treatment period authorized by the referral, such specialist shall be permitted to treat the individual without a further referral from the individual's primary care provider and may authorize such referrals, procedures, tests, and other medical services related to the initial referral as the individual's primary care provider would otherwise be permitted to provide or authorize. The plan shall have a procedure by which an individual who has an ongoing special condition that requires ongoing care from a specialist may receive a standing referral to such specialist for the treatment of the special condition. If the primary care provider, in consultation with the plan and the specialist, if any, determines that such a standing referral is appropriate, the plan or issuer shall make such a referral to a specialist. Nothing contained herein shall prohibit the plan from requiring a participating specialist to provide written notification to the covered individual's primary care physician of any visit to such specialist. Such notification may include a description of the health care services rendered at the time of the visit.

14. Include provisions allowing employees to continue receiving health care services for a period of up to 90 days from the date of the primary care physician's notice of termination from any of the plan's provider panels. The plan shall notify any provider at least 90 days prior to the date of termination of the provider, except when the provider is terminated for cause.

For a period of at least 90 days from the date of the notice of a provider's termination from any of the plan's provider panels, except when a provider is terminated for cause, a provider shall be permitted by the plan to render health care services to any of the covered employees who (i) were in an active course of treatment from the provider prior to the notice of termination and (ii) request to continue receiving health care services from the provider.

Notwithstanding the provisions of this subdivision, any provider shall be permitted by the plan to continue rendering health services to any covered employee who has entered the second trimester of pregnancy at the time of the provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue through the provision of postpartum care directly related to the delivery.

Notwithstanding the provisions of this subdivision, any provider shall be permitted to continue rendering health services to any covered employee who is determined to be terminally ill (as defined under § 1861(dd)(3)(A) of the Social Security Act) at the time of a provider's termination of participation, except when a provider is terminated for cause. Such treatment shall, at the covered employee's option, continue for the remainder of the employee's life for care directly related to the treatment of the terminal illness.

A provider who continues to render health care services pursuant to this subdivision shall be reimbursed in accordance with the carrier's agreement with such provider existing immediately before the provider's termination of participation.

15. Include coverage for patient costs incurred during participation in clinical trials for treatment studies on cancer, including ovarian cancer trials.

The reimbursement for patient costs incurred during participation in clinical trials for treatment studies on cancer shall be determined in the same manner as reimbursement is determined for other medical and surgical procedures. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally.

For purposes of this subdivision:

"Cooperative group" means a formal network of facilities that collaborate on research projects and have an established NIH-approved peer review program operating within the group. "Cooperative group" includes (i) the National Cancer Institute Clinical Cooperative Group and (ii) the National Cancer Institute Community Clinical Oncology Program.

"FDA" means the Federal Food and Drug Administration.

"Multiple project assurance contract" means a contract between an institution and the federal Department of Health and Human Services that defines the relationship of the institution to the federal Department of Health and Human Services and sets out the responsibilities of the institution and the procedures that will be used by the institution to protect human subjects.

"NCI" means the National Cancer Institute.

"NIH" means the National Institutes of Health.

"Patient" means a person covered under the plan established pursuant to this section.

"Patient cost" means the cost of a medically necessary health care service that is incurred as a result of the treatment being provided to a patient for purposes of a clinical trial. "Patient cost" does not include (i) the cost of nonhealth care services that a patient may be required to receive as a result of the treatment being provided for purposes of a clinical trial, (ii) costs associated with managing the research associated with the clinical trial, or (iii) the cost of the investigational drug or device.

Coverage for patient costs incurred during clinical trials for treatment studies on cancer shall be provided if the treatment is being conducted in a Phase II, Phase III, or Phase IV clinical trial. Such treatment may, however, be provided on a case-by-case basis if the treatment is being provided in a Phase I clinical trial.

The treatment described in the previous paragraph shall be provided by a clinical trial approved by:

a. The National Cancer Institute;

b. An NCI cooperative group or an NCI center;

c. The FDA in the form of an investigational new drug application;

d. The federal Department of Veterans Affairs; or

e. An institutional review board of an institution in the Commonwealth that has a multiple project assurance contract approved by the Office of Protection from Research Risks of the NCI.

The facility and personnel providing the treatment shall be capable of doing so by virtue of their experience, training, and expertise.

Coverage under this subdivision shall apply only if:

(1) There is no clearly superior, noninvestigational treatment alternative;

(2) The available clinical or preclinical data provide a reasonable expectation that the treatment will be at least as effective as the noninvestigational alternative; and

(3) The patient and the physician or health care provider who provides services to the patient under the plan conclude that the patient's participation in the clinical trial would be appropriate, pursuant to procedures established by the plan.

16. Include coverage providing a minimum stay in the hospital of not less than 23 hours for a covered employee following a laparoscopy-assisted vaginal hysterectomy and 48 hours for a covered employee following a vaginal hysterectomy, as outlined in Milliman & Robertson's nationally recognized guidelines. Nothing in this subdivision shall be construed as requiring the

provision of the total hours referenced when the attending physician, in consultation with the covered employee, determines that a shorter hospital stay is appropriate.

17. Include coverage for biologically based mental illness.

For purposes of this subdivision, a "biologically based mental illness" is any mental or nervous condition caused by a biological disorder of the brain that results in a clinically significant syndrome that substantially limits the person's functioning; specifically, the following diagnoses are defined as biologically based mental illness as they apply to adults and children: schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention deficit hyperactivity disorder, autism, and drug and alcoholism addiction.

Coverage for biologically based mental illnesses shall neither be different nor separate from coverage for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayment and coinsurance factors.

Nothing shall preclude the undertaking of usual and customary procedures to determine the appropriateness of, and medical necessity for, treatment of biologically based mental illnesses under this option, provided that all such appropriateness and medical necessity determinations are made in the same manner as those determinations made for the treatment of any other illness, condition or disorder covered by such policy or contract.

18. Offer and make available coverage for the treatment of morbid obesity through gastric bypass surgery or such other methods as may be recognized by the National Institutes of Health as effective for the long-term reversal of morbid obesity. Such coverage shall have durational limits, dollar limits, deductibles, copayments and coinsurance factors that are no less favorable than for physical illness generally. Access to surgery for morbid obesity shall not be restricted based upon dietary or any other criteria not approved by the National Institutes of Health. For purposes of this subdivision, "morbid obesity" means (i) a weight that is at least 100 pounds over or twice the ideal weight for frame, age, height, and gender as specified in the 1983 Metropolitan Life Insurance tables, (ii) a body mass index (BMI) equal to or greater than 35 kilograms per meter squared with comorbidity or coexisting medical conditions such as hypertension, cardiopulmonary conditions, sleep apnea, or diabetes, or (iii) a BMI of 40 kilograms per meter squared without such comorbidity. As used herein, "BMI" equals weight in kilograms divided by height in meters squared.

19. Include coverage for colorectal cancer screening, specifically screening with an annual fecal occult blood test, flexible sigmoidoscopy or colonoscopy, or in appropriate circumstances radiologic imaging, in accordance with the most recently published recommendations established by the American College of Gastroenterology, in consultation with the American Cancer Society, for the ages, family histories, and frequencies referenced in such recommendations. The coverage for

colorectal cancer screening shall not be more restrictive than or separate from coverage provided for any other illness, condition or disorder for purposes of determining deductibles, benefit year or lifetime durational limits, benefit year or lifetime dollar limits, lifetime episodes or treatment limits, copayment and coinsurance factors, and benefit year maximum for deductibles and copayments and coinsurance factors.

20. On and after July 1, 2002, require that a prescription benefit card, health insurance benefit card, or other technology that complies with the requirements set forth in § 38.2-3407.4:2 be issued to each employee provided coverage pursuant to this section, and shall upon any changes in the required data elements set forth in subsection A of § 38.2-3407.4:2, either reissue the card or provide employees covered under the plan such corrective information as may be required to electronically process a prescription claim.

21. Include coverage for infant hearing screenings and all necessary audiological examinations provided pursuant to § 32.1-64.1 using any technology approved by the United States Food and Drug Administration, and as recommended by the national Joint Committee on Infant Hearing in its most current position statement addressing early hearing detection and intervention programs. Such coverage shall include follow-up audiological examinations as recommended by a physician, physician assistant, nurse practitioner or audiologist and performed by a licensed audiologist to confirm the existence or absence of hearing loss.

22. Notwithstanding any provision of this section to the contrary, every plan established in accordance with this section shall comply with the provisions of § 2.2-2818.2.

C. Claims incurred during a fiscal year but not reported during that fiscal year shall be paid from such funds as shall be appropriated by law. Appropriations, premiums and other payments shall be deposited in the employee health insurance fund, from which payments for claims, premiums, cost containment programs and administrative expenses shall be withdrawn from time to time. The funds of the health insurance fund shall be deemed separate and independent trust funds, shall be segregated from all other funds of the Commonwealth, and shall be invested and administered solely in the interests of the employees and their beneficiaries. Neither the General Assembly nor any public officer, employee, or agency shall use or authorize the use of such trust funds for any purpose other than as provided in law for benefits, refunds, and administrative expenses, including but not limited to legislative oversight of the health insurance fund.

D. For the purposes of this section:

"Peer-reviewed medical literature" means a scientific study published only after having been critically reviewed for scientific accuracy, validity, and reliability by unbiased independent experts in a journal that has been determined by the International Committee of Medical Journal Editors to have met the Uniform Requirements for Manuscripts submitted to biomedical journals. Peer-reviewed medical literature does not include publications or supplements to publications that are sponsored to a significant extent by a pharmaceutical manufacturing company or health carrier.

"Standard reference compendia" means:

1. American Hospital Formulary Service -- Drug Information;

2. National Comprehensive Cancer Network's Drugs & Biologics Compendium; or

3. Elsevier Gold Standard's Clinical Pharmacology.

(Effective until October 1, 2016) "State employee" means state employee as defined in § 51.1-124.3; employee as defined in § 51.1-201; the Governor, Lieutenant Governor and Attorney General; judge as defined in § 51.1-301 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth; and interns and residents employed by the School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of the Virginia Commonwealth University Health System Authority as provided in § 23-50.16:24.

(Effective October 1, 2016, until July 1, 2018) "State employee" means state employee as defined in § 51.1-124.3; employee as defined in § 51.1-201; the Governor, Lieutenant Governor and Attorney General; judge as defined in § 51.1-301 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth; and interns and residents employed by the School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of the Virginia Commonwealth University Health System Authority as provided in § 23.1-2415.

(Effective July 1, 2018) "State employee" means state employee as defined in § 51.1-124.3; employee as defined in § 51.1-201; the Governor, Lieutenant Governor and Attorney General; judge as defined in § 51.1-301 and judges, clerks and deputy clerks of regional juvenile and domestic relations, county juvenile and domestic relations, and district courts of the Commonwealth; interns and residents employed by the School of Medicine and Hospital of the University of Virginia, and interns, residents, and employees of the Virginia Commonwealth University Health System Authority as provided in § 23.1-2415; and employees of the Virginia Alcoholic Beverage Control Authority as provided in § 4.1-101.05.

E. Provisions shall be made for retired employees to obtain coverage under the above plan, including, as an option, coverage for vision and dental care. The Commonwealth may, but shall not be obligated to, pay all or any portion of the cost thereof.

F. Any self-insured group health insurance plan established by the Department of Human Resource Management that utilizes a network of preferred providers shall not exclude any physician solely on the basis of a reprimand or censure from the Board of Medicine, so long as the physician otherwise meets the plan criteria established by the Department.

G. The plan shall include, in each planning district, at least two health coverage options, each sponsored by unrelated entities. No later than July 1, 2006, one of the health coverage options to

be available in each planning district shall be a high deductible health plan that would qualify for a health savings account pursuant to § 223 of the Internal Revenue Code of 1986, as amended.

In each planning district that does not have an available health coverage alternative, the Department shall voluntarily enter into negotiations at any time with any health coverage provider who seeks to provide coverage under the plan.

This subsection shall not apply to any state agency authorized by the Department to establish and administer its own health insurance coverage plan separate from the plan established by the Department.

H. Any self-insured group health insurance plan established by the Department of Human Resource Management that includes coverage for prescription drugs on an outpatient basis may apply a formulary to the prescription drug benefits provided by the plan if the formulary is developed, reviewed at least annually, and updated as necessary in consultation with and with the approval of a pharmacy and therapeutics committee, a majority of whose members are actively practicing licensed (i) pharmacists, (ii) physicians, and (iii) other health care providers.

If the plan maintains one or more drug formularies, the plan shall establish a process to allow a person to obtain, without additional cost-sharing beyond that provided for formulary prescription drugs in the plan, a specific, medically necessary nonformulary prescription drug if, after reasonable investigation and consultation with the prescriber, the formulary drug is determined to be an inappropriate therapy for the medical condition of the person. The plan shall act on such requests within one business day of receipt of the request.

Any plan established in accordance with this section shall be authorized to provide for the selection of a single mail order pharmacy provider as the exclusive provider of pharmacy services that are delivered to the covered person's address by mail, common carrier, or delivery service. As used in this subsection, "mail order pharmacy provider" means a pharmacy permitted to conduct business in the Commonwealth whose primary business is to dispense a prescription drug or device under a prescriptive drug order and to deliver the drug or device to a patient primarily by mail, common carrier, or delivery service.

I. Any plan established in accordance with this section requiring preauthorization prior to rendering medical treatment shall have personnel available to provide authorization at all times when such preauthorization is required.

J. Any plan established in accordance with this section shall provide to all covered employees written notice of any benefit reductions during the contract period at least 30 days before such reductions become effective.

K. No contract between a provider and any plan established in accordance with this section shall include provisions that require a health care provider or health care provider group to deny

covered services that such provider or group knows to be medically necessary and appropriate that are provided with respect to a covered employee with similar medical conditions.

L. The Department of Human Resource Management shall appoint an Ombudsman to promote and protect the interests of covered employees under any state employee's health plan.

The Ombudsman shall:

1. Assist covered employees in understanding their rights and the processes available to them according to their state health plan.

2. Answer inquiries from covered employees by telephone and electronic mail.

3. Provide to covered employees information concerning the state health plans.

4. Develop information on the types of health plans available, including benefits and complaint procedures and appeals.

5. Make available, either separately or through an existing Internet web site utilized by the Department of Human Resource Management, information as set forth in subdivision 4 and such additional information as he deems appropriate.

6. Maintain data on inquiries received, the types of assistance requested, any actions taken and the disposition of each such matter.

7. Upon request, assist covered employees in using the procedures and processes available to them from their health plan, including all appeal procedures. Such assistance may require the review of health care records of a covered employee, which shall be done only in accordance with the federal Health Insurance Portability and Accountability Act privacy rules. The confidentiality of any such medical records shall be maintained in accordance with the confidentiality and disclosure laws of the Commonwealth.

8. Ensure that covered employees have access to the services provided by the Ombudsman and that the covered employees receive timely responses from the Ombudsman or his representatives to the inquiries.

9. Report annually on his activities to the standing committees of the General Assembly having jurisdiction over insurance and over health and the Joint Commission on Health Care by December 1 of each year.

M. The plan established in accordance with this section shall not refuse to accept or make reimbursement pursuant to an assignment of benefits made to a dentist or oral surgeon by a covered employee.

For purposes of this subsection, "assignment of benefits" means the transfer of dental care coverage reimbursement benefits or other rights under the plan. The assignment of benefits shall not be effective until the covered employee notifies the plan in writing of the assignment.

N. Beginning July 1, 2006, any plan established pursuant to this section shall provide for an identification number, which shall be assigned to the covered employee and shall not be the same as the employee's social security number.

O. Any group health insurance plan established by the Department of Human Resource Management that contains a coordination of benefits provision shall provide written notification to any eligible employee as a prominent part of its enrollment materials that if such eligible employee is covered under another group accident and sickness insurance policy, group accident and sickness subscription contract, or group health care plan for health care services, that insurance policy, subscription contract or health care plan may have primary responsibility for the covered expenses of other family members enrolled with the eligible employee. Such written notification shall describe generally the conditions upon which the other coverage would be primary for dependent children enrolled under the eligible employee's coverage and the method by which the eligible enrollee may verify from the plan that coverage would have primary responsibility for the covered expenses of each family member.

P. Any plan established by the Department of Human Resource Management pursuant to this section shall provide that coverage under such plan for family members enrolled under a participating state employee's coverage shall continue for a period of at least 30 days following the death of such state employee.

Q. The plan established in accordance with this section that follows a policy of sending its payment to the covered employee or covered family member for a claim for services received from a nonparticipating physician or osteopath shall (i) include language in the member handbook that notifies the covered employee of the responsibility to apply the plan payment to the claim from such nonparticipating provider, (ii) include this language with any such payment sent to the covered employee or covered family member, and (iii) include the name and any last known address of the nonparticipating provider on the explanation of benefits statement.

R. The Department of Human Resource Management shall report annually, by November 30 of each year, on cost and utilization information for each of the mandated benefits set forth in subsection B, including any mandated benefit made applicable, pursuant to subdivision B 22, to any plan established pursuant to this section. The report shall be in the same detail and form as required of reports submitted pursuant to § 38.2-3419.1, with such additional information as is required to determine the financial impact, including the costs and benefits, of the particular mandated benefit.

1970, c. 557, § 2.1-20.1; 1972, c. 803; 1973, cc. 69, 297; 1978, c. 70; 1984, c. 430; 1988, c. 634; 1989, cc. 559, 664; 1990, c. 607; 1993, c. 138; 1995, c. 353; 1996, cc. 155, 201, 905, 1046; 1997, cc. 43, 468, 521, 656; 1998, cc. 35, 56, 257, 386, 631, 709, 851, 858, 875; 1999, cc. 643, 649, 921, 941; 2000, cc. 66, 149, 465, 534, 657, 720, 888; 2001, cc. 334, 558, 663, 844; 2004, cc. 156,

279, 855; 2005, cc. 503, 572, 640, 739; 2006, c. 396; 2008, c. 420; 2009, cc. 247, 317, 813, 840; 2010, cc. 157, 357, 443; 2012, cc. 60, 201; 2013, c. 709; 2014, c. 631; 2015, cc. 38, 730.

§ 2.2-2818.01. Employer contributions

Notwithstanding any other provisions of law, the Department shall have the sole responsibility and authority to establish and enforce employer contribution rates for any plan established pursuant to § 2.2-2818.

2012, c. 600.

§ 2.2-2818.1. Supplemental health insurance coverage; state employees eligible for military health insurance coverage

A. The Department of Human Resource Management may offer a voluntary supplemental health coverage program for state employees under this section.

B. Under the supplemental health coverage program, a state employee who is eligible to participate in the health insurance program pursuant to § 2.2-2818 and who is also eligible for benefits under the TRICARE Military Health System as a military retiree may elect to receive coverage under a TRICARE supplemental health plan offered as an option under the state's cafeteria plan established under § 125 of the Internal Revenue Code . Dependents eligible to participate in the state health insurance program who are also TRICARE eligible may also be covered under the TRICARE supplemental health plan.

C. The cost of supplemental health coverage provided under this section shall be paid in full by the member on a pre-tax basis subject to the rules and regulations of § 125 of the Internal Revenue Code .

D. The Department of Human Resource Management may not implement a supplemental health coverage program under this section if the Department finds that the program would not be cost-effective or would otherwise not be advantageous to the state or program participants.

2006, c. 93; 2011, cc. 35, 45.

§ 2.2-2818.2. Application of mandates to the state employee health insurance plan

A. As used in this section, "insurance mandate" means a mandatory obligation with respect to coverage, benefits, or the number or types of providers imposed on policies of accident and health insurance under Title 38.2. "Insurance mandate" does not include an administrative rule or regulation imposing a mandatory obligation with respect to coverage, benefits, or providers unless that mandatory obligation was specifically imposed on policies of accident and health insurance by statute.

B. Notwithstanding the provisions of § 2.2-2818, any law imposed under Title 38.2 that becomes effective on or after July 1, 2009, that provides for an insurance mandate for policies of accident and health insurance shall also apply to health coverage offered to state employees pursuant to § 2.2-2818.

C. If health coverage offered to state employees under § 2.2-2818 offers coverage in the same manner and to the same extent as the coverage required by an insurance mandate imposed under Title 38.2 or coverage that is greater than an insurance mandate imposed under Title 38.2, the coverage offered to state employees under § 2.2-2818 shall be considered in compliance with the insurance mandate.

2009, cc. 247, 317.

§ 2.2-2819. Purchase of continued health insurance coverage by the surviving spouse and any dependents of an active or retired state employee

A. The surviving spouse and any dependents of an active state employee or a retired state employee may, upon proper application to the Department of Human Resource Management, purchase continued health insurance coverage on the following conditions: (i) on the date of death, the state employee participated in a health insurance plan administered by the Department of Human Resource Management pursuant to § 2.2-2818 or § 2.2-1204 and (ii) on the date of the deceased's death, the applicants were included in the health insurance plan in condition (i) of this subsection. The health insurance plans administered by the Department of Human Resource Management pursuant to § 2.2-2818 or § 2.2-1204 shall provide means whereby coverage for the spouse and dependents of active or retired state employees may be purchased.

B. Any application to purchase continued health insurance coverage hereunder shall be made in writing to the Department of Human Resource Management within sixty days of the date of the deceased's death. The time for making application may be extended by the Department for good cause shown.

C. In addition to any necessary information requested by the Department of Human Resource Management, the application shall state whether conditions (i) and (ii) set forth in subsection A have been met. If the Department states that such conditions have not been met, the Department shall conduct an informal fact-finding conference or consultation with the applicant pursuant to § 2.2-4019 of the Administrative Process Act (§ 2.2-4000 et seq.). Upon scheduling the conference or consultation, the provisions of the Administrative Process Act shall apply thereafter.

D. Upon payment of any required premiums, coverage shall automatically be extended during the period for making application and shall be effective retroactive to the date of the deceased's death.

E. The terms, conditions, and costs of continued health insurance coverage purchased hereunder shall be subject to administration by the Department of Human Resource Management. The Department may increase the cost of coverage consistent with its administration of health insurance plans under § 2.2-2818 or § 2.2-1204.

F. For the surviving spouse, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death, (ii) remarriage, (iii) alternate health insurance coverage being obtained, or (iv) any applicable condition outlined in the

policies and procedures of the Department of Human Resource Management governing health insurance plans administered pursuant to § 2.2-2818 or § 2.2-1204.

G. For any surviving dependents, continued health insurance coverage purchased hereunder shall automatically terminate upon occurrence of any of the following: (i) death; (ii) marriage; (iii) alternate health insurance coverage being obtained; (iv) attaining the age of twenty-one, unless the dependent is (a) a full-time college student, in which event coverage shall not terminate until such dependent has either attained the age of twenty-five or until such time as the dependent ceases to be a full-time college student, whichever occurs first, or (b) under a mental or physical disability, in which event coverage shall not terminate until three months following cessation of the disability; or (v) any applicable condition outlined in the policies and procedures of the Department of Human Resource Management governing health insurance plans administered pursuant to § 2.2-2818 or § 2.2-1204.

1995, c. 179, § 2.1-20.1:03; 1997, c. 886; 2000, cc. 66, 657; 2001, c. 844.

§ 2.2-2820. Purchase of health insurance coverage by part-time state employees

A. Any part-time state employee employed by the Commonwealth and working twenty or more hours per week for a period of at least six months may, upon proper application to the Department of Human Resource Management (the Department), to purchase health insurance coverage for himself through a health insurance plan administered by the Department. This plan for part-time employees may differ from the other plans sponsored by the Department for state employees and shall be exempt from all mandates contained in § 2.2-2818.

B. Applications to purchase health insurance coverage under this section shall be made on an application form prescribed by the Department. In addition to his application, the applicant shall provide any necessary supporting documents requested by the Department.

C. Upon payment of the required premiums, coverage shall be effective retroactive to the date of the application.

D. The terms, conditions, and costs of health insurance coverage purchased under this section shall be subject to administration by the Department. The Department may increase the cost of coverage consistent with its administration of the health insurance plans under § 2.2-2818.

E. Health insurance coverage purchased under this section shall automatically terminate upon the occurrence of any of the following: (i) the applicant's death, (ii) alternate health insurance coverage being obtained by the applicant, (iii) the applicant's separation from state service, or (iv) any applicable condition outlined in the policies and procedures of the Department governing its administration of health insurance plans pursuant to § 2.2-2818.

1999, c. 758, § 2.1-20.1:06; 2000, cc. 66, 657; 2001, c. 844.

§ 2.2-2820.1. Repealed

Repealed by Acts 2004, c. 58.

§ 2.2-2821. Workers' compensation insurance plan for state employees trust fund for payment of claims

A. The Workers' Compensation Insurance Program (the Program) established under former § 2.1-526.10 and administered by the Department of General Services through its Division of Risk Management is hereby continued and transferred to the Department of Human Resource Management.

B. The Program shall be established through a program of self-insurance, purchased insurance or a combination of self-insurance and purchased insurance that is determined to be the most cost effective on a statewide basis and will be of less cost to the Commonwealth than the aggregate of individual agency policies. If the Department of Human Resource Management is informed by the Office of the Attorney General that it will not provide a defense due to a conflict or other appropriate reason, the Department shall provide for payment of attorneys' fees and expenses incurred in defending workers' compensation claims against the Commonwealth, its agencies and institutions.

C. The Program shall provide for the establishment of a trust fund for the payment of claims covered under the Program. The funds shall be invested as provided in § 2.2-1806, and interest shall be added to the fund as earned. The trust fund shall also provide for payment of administrative costs, contractual costs, and other necessary expenses related to the administration of the Program.

D. The Program shall be submitted to the Governor for approval prior to implementation.

E. The Department of Human Resource Management may confer with the proper officials or employees of all agencies and institutions of the Commonwealth for the purpose of providing loss prevention programs. The Department may seek the assistance of state agencies, risk management consulting companies, loss prevention engineering companies, and their representatives in devising means by which causes of loss may be reduced or eliminated.

F. Information contained in investigative reports of any state or local police department, sheriff's office, fire department or fire marshal relevant to the Program established pursuant to this section shall be made available upon request by the Department. Information so requested shall be furnished within a reasonable time, not to exceed thirty days.

2000, cc. 633, 697, § 2.1-114.5:02; 2001, c. 844.

§ 2.2-2821.1. Leave for bone marrow or organ donation

State employees shall be allowed up to thirty days of paid leave in any calendar year, in addition to other paid leave, to serve as bone marrow or organ donors. The Department shall develop personnel policies providing for the use of such leave. For the purposes of this section, "state employee" means any person who is regularly employed full time on a salaried basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, no more often than biweekly, in whole or in part, by the Commonwealth or any department, institution, or agency thereof.

2001, c. 714, § 2.1-114.5:03.

§ 2.2-2821.2. Leave for volunteer fire and volunteer emergency medical services

State employees shall be allowed up to 24 hours of paid leave in any calendar year, in addition to other paid leave, to serve with a volunteer fire department or volunteer emergency medical services agency or auxiliary unit thereof that has been recognized in accordance with § 15.2-955 by an ordinance or resolution of the political subdivision where the volunteer fire department or volunteer emergency medical services agency is located as being a part of the safety program of such political subdivision. The Department shall develop personnel policies providing for the use of such leave. For the purposes of this section, "state employee" means any person who is regularly employed full time on a salaried basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, no more often than biweekly, in whole or in part, by the Commonwealth or any department, institution, or agency thereof.

2001, c. 760, § 2.1-114.5:04; 2009, c. 457; 2015, cc. 502, 503.

§ 2.2-2822. Ownership and use of patents and copyrights developed by certain public employees; Creative Commons copyrights

A. Patents, copyrights or materials that were potentially patentable or copyrightable developed by a state employee during working hours or within the scope of his employment or when using state-owned or state-controlled facilities shall be the property of the Commonwealth.

B. The Secretary of Administration, in consultation with the Secretary of Technology, shall establish policies, subject to the approval of the Governor, regarding the protection and release of patents and copyrights owned by the Commonwealth. Such policies shall include, at a minimum, the following:

1. A policy granting state agencies the authority over the protection and release of patents and copyrights created by employees of the agency. Such policy shall authorize state agencies to release all potentially copyrightable materials under the Creative Commons or Open Source Initiative licensing system, as appropriate.

2. A provision authorizing state agencies to seek patent protection only in those instances where the agency reasonably determines the patent has significant commercial value. The responsible state agency shall file with the Secretary a summary of the expected commercial value of the patent.

3. A procedure authorizing state agencies to determine whether to license or transfer to a state employee any interest in potentially patentable material developed by that employee during work hours, as well as to determine the terms of such license or transfer.

4. A procedure authorizing state agencies to determine whether to license or transfer to a private entity any interest in potentially patentable material developed by that agency, as well as to determine the terms of such license or transfer.

C. Nothing in this section shall be construed to limit access to public records as provided in the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

D. This section shall not apply to employees of public institutions of higher education who shall be subject to the patent and copyright policies of the institution employing them.

1985, c. 502, § 2.1-20.1:1; 2001, c. 844; 2009, cc. 791, 841.

§ 2.2-2823. Traveling expenses on state business; public or private transportation

A. Pursuant to § 2.2-2825, any person traveling on state business shall be entitled to reimbursement for certain actual expenses as are necessary and ordinarily incidental to travel. If transportation is by public means, reimbursement shall be at the actual cost thereof. If transportation is by private means, reimbursement shall be at the rate as specified in the current general appropriation act.

B. Mileage allowed under subsection A or § 30-19.15 shall be construed to include all costs incident to the maintenance and operation of private transportation except storage and parking fees, turnpike, tunnel, ferry and bridge tolls.

Code 1950, §§ 14-5, 14-5.4; 1954, c. 709; 1964, c. 386, §§ 14.1-5, 14.1-9; 1968, c. 711; 1969, Ex. Sess., c. 4; 1972, cc. 69, 719; 1975, c. 132; 1976, c. 385; 1977, c. 493; 1980, c. 224; 1984, c. 161; 1995, c. 358; 1998, c. 872, §§ 2.1-20.8, 2.1-20.12; 2001, c. 844.

§ 2.2-2824. Monitoring travel expenses while on state business

It shall be the duty of the head of each state agency, commission, or board, or his designee, or any other official granted supervisory control for the expending of state funds to examine all applications for the reimbursement of personal funds expended by any employee of such agency, commission, or board for travel while conducting official business for state government. All such expenditures shall be necessary and reasonable for the efficient and effective operation of the agency, commission or board.

1977, c. 493, § 14.1-5.1; 1998, c. 872, § 2.1-20.9; 2001, c. 844.

§ 2.2-2825. Reimbursement for certain travel expenditures; restrictions on reimbursement

Persons conducting official business of the Commonwealth shall be reimbursed for their reasonable and necessary travel expenditures that shall include transportation as provided in § 2.2-2823, parking, and lodging. Receipts for lodging and transportation, if by other than privately owned automobile or state-owned vehicle, shall be submitted with any travel expense account presented to the Comptroller for payment. Transportation by common carrier shall be limited to the cost for travel by the most direct and practical route, and in amounts not exceeding those for tourist or coach class accommodations, if such accommodations are available. Travel shall be over the most direct and practical route. Reimbursement for the cost of transportation shall not be certified to the Comptroller for payment by state agencies in excess of the reimbursement allowed in § 2.2-2823 except in an emergency or, when in the interest of the Commonwealth, a greater expense is justified, the facts in each such instance to be stated in the expense account.

Persons conducting official business of the Commonwealth shall be reimbursed for the reasonable and necessary actual costs of meals, gratuities, and other incidental expenses. At the discretion of the governing authority, a per diem payment may be made in lieu of this reimbursement for meals, gratuities, and other incidental expenses.

The Comptroller shall establish policies on travel expenses for all agencies in the executive branch of state government. Policies on travel expenses for the legislative branch, judicial branch, and independent agencies shall be established by the appropriate governing authority.

1954, c. 709, § 14-5.1; 1964, c. 386, § 14.1-6; 1977, c. 493, § 14.1-5.2; 1995, c. 358; 1998, c. 872, § 2.1-20.10; 2001, c. 844.

§ 2.2-2826. Travel expense accounts; review by Comptroller

All travel expense accounts shall be submitted on forms prescribed or approved by the Comptroller. Review shall be made by the Comptroller of such accounts subject to the provisions of § 2.2-1822. If accounts do not conform to the provisions of § 2.2-2825, the Comptroller shall return those accounts to the agency or commission with an explanation of why they do not conform. The agency or commission may correct the accounts and resubmit them to the Comptroller.

1954, c. 709, § 14-5.5; 1964, c. 386, § 14.1-10; 1977, c. 493, § 14.1-5.3; 1998, c. 872, § 2.1-20.11; 2001, c. 844.

§ 2.2-2827. Restrictions on state employee access to information infrastructure

A. For the purpose of this section:

"Agency" means any agency, authority, board, department, division, commission, institution, public institution of higher education, bureau, or like governmental entity of the Commonwealth, except the Department of State Police.

"Information infrastructure" means telecommunications, cable, and computer networks and includes the Internet, the World Wide Web, Usenet, bulletin board systems, on-line systems, and telephone networks.

"Sexually explicit content" means (i) any description of or (ii) any picture, photograph, drawing, motion picture film, digital image or similar visual representation depicting sexual bestiality, a lewd exhibition of nudity, as nudity is defined in § 18.2-390, sexual excitement, sexual conduct or sadomasochistic abuse, as also defined in § 18.2-390, coprophilia, urophilia, or fetishism.

B. Except to the extent required in conjunction with a bona fide, agency-approved research project or other agency-approved undertaking, no agency employee shall utilize agency-owned or agency-leased computer equipment to access, download, print or store any information infrastructure files or services having sexually explicit content. Agency approvals shall be given in writing by agency heads, and any such approvals shall be available to the public under the provisions of the Virginia Freedom of Information Act (§ 2.2-3700).

C. All agencies shall immediately furnish their current employees copies of this section's provisions, and shall furnish all new employees copies of this section concurrent with authorizing them to use agency computers.

1996, c. 382, §§ 2.1-804, 2.1-805, 2.1-806; 1999, c. 384; 2001, c. 844.

§ 2.2-2828. Repealed

Repealed by Acts 2013, cc. 131 and 722, cl. 1.

§ 2.2-2829. Disappearance of public officer; when office presumed vacant

Notwithstanding any other provision of law relating to the length of time after which the continued absence of a person shall create a presumption of death, when a petition alleging that a person who is a public officer elected by the people or by the General Assembly or appointed by the Governor has disappeared and after diligent search cannot be found is presented to a court of record in the city or county in which the last known residence of the person is located, and when it appears to the satisfaction of the court that the circumstances surrounding the disappearance afford reasonable grounds for the belief that the person is dead, then the office held by such person shall be presumed to be vacant and the court shall enter an order to that effect.

1973, c. 168, § 2.1-17.1; 2001, c. 844.

§ 2.2-2830. Governor to fill vacancy in any state office where no other provision is made by law; term of appointment; benefits

A. When a vacancy occurs in any state office, whether the officer is elected by the people or the General Assembly, or is appointed by the Governor, and no other provision is made for filling the same, it shall be filled by the Governor.

B. If the office is one filled by election by the people, the appointee shall hold such office until the next general election, and thereafter until his successor qualifies, according to law. If the office is filled by an election by the General Assembly or appointment by the Governor, and such appointment requires confirmation of the Senate or the General Assembly, the appointee shall temporarily hold such office until thirty days after the commencement of the next session of the General Assembly. Notwithstanding any provision of law to the contrary, any individual temporarily appointed under this section shall be eligible for, receive, and accrue all benefits, retirement, health and life insurance, personnel and otherwise, due such appointee by virtue of his holding such office.

Code 1950, §§ 2-14, 2-15; 1966, c. 677, §§ 2.1-18, 2.1-19; 1981, c. 511; 2001, c. 844.

§ 2.2-2831. (Effective until October 1, 2016) Payment of severance benefits; exceptions

No severance benefit shall be provided to any state officer or employee except as specifically provided by law. The provisions of this section shall not apply to any severance benefit provided to (i) any officers or faculty of a public institution of higher education as defined in § 23-38.89 or (ii) a state officer or employee who is not eligible for a transitional severance benefit pursuant to Chapter 32 (§ 2.2-3200 et seq.) of this title. Nothing in this section shall be construed to prohibit

payments in settlement of an employment dispute approved pursuant to § 2.2-514 or payments in satisfaction of a judgment.

2006, cc. 813, 902.

§ 2.2-2831. (Effective October 1, 2016) Payment of severance benefits; exceptions
No severance benefit shall be provided to any state officer or employee except as specifically provided by law. The provisions of this section shall not apply to any severance benefit provided to (i) any officers or faculty of a public institution of higher education as defined in § 23.1-100 or (ii) a state officer or employee who is not eligible for a transitional severance benefit pursuant to Chapter 32 (§ 2.2-3200 et seq.) of this title. Nothing in this section shall be construed to prohibit payments in settlement of an employment dispute approved pursuant to § 2.2-514 or payments in satisfaction of a judgment.

2006, cc. 813, 902.

§ 2.2-2832. Retaliatory actions against persons providing testimony before a committee or subcommittee of the General Assembly
A. No officer or employee of a state agency shall use his public position to retaliate or threaten to retaliate against a person providing testimony before a committee or subcommittee of the General Assembly.

B. To be covered by the provisions of this section, a person who provides testimony before a committee or subcommittee of the General Assembly shall do so in good faith and upon a reasonable belief that the information is accurate. Testimony that is reckless or that the person knew or should have known was false, confidential, malicious, or otherwise prohibited by law or policy shall not be deemed good faith testimony.

C. Any person who believes that he is the subject of retaliatory action by an officer or employee of a state agency on account of testimony that he provided before a committee or subcommittee of the General Assembly may file a complaint with the Office of the State Inspector General.

D. Intentional violation of subsection A by an officer or employee of a state agency shall constitute malfeasance in office and shall subject the officer or employee responsible to suspension or removal from office, as may be provided by law in other cases of malfeasance.

2016, c. 628.

Chapter 29 - VIRGINIA PERSONNEL ACT

§ 2.2-2900. Short title; purpose
This chapter shall be known and may be cited as the "Virginia Personnel Act."

The purpose of this chapter is to ensure for the Commonwealth a system of personnel administration based on merit principles and objective methods of appointment, promotion, transfer, layoff, removal, discipline, and other incidents of state employment.

Code 1950, § 2-78; 1966, c. 677, § 2.1-110; 1970, c. 546; 2001, c. 844.

§ 2.2-2901. Appointments, promotions and tenure based upon merit and fitness

A. In accordance with the provisions of this chapter all appointments and promotions to and tenure in positions in the service of the Commonwealth shall be based upon merit and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications by the respective appointing authorities.

Persons holding positions in the service of the Commonwealth on July 1, 1952, shall be deemed to be holding their positions as though they had received appointment under the terms of this chapter.

B. Persons who leave the service of the Commonwealth for service in any of the armed forces of the United States shall be entitled to be restored to such positions upon the termination of their service with the armed forces, provided such persons, except for good cause shown, have filed an application for restoration to such positions within 90 calendar days following such termination of military service, accompanied by a certificate attesting that the military duty was satisfactorily performed. Such persons shall thereafter hold such positions as though they had received appointment under the terms of this chapter, except as to any such position which, in the meantime, may have been abolished. Any such former employee returning to, or applying for, employment in the state service, as provided by this section, shall be considered as having at least as favorable a status with reference to this chapter as he would have occupied if his service had been continuous.

C. No establishment of a position or rate of pay, and no change in rate of pay shall become effective except on order of the appointing authority and approval by the Governor. This subsection shall not apply to any position the compensation of which is at a rate of $1,200 per annum or less.

D. In order to attract and retain professional auditors, accountants and staff members in the service of the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission may establish scales of pay for such positions notwithstanding the provisions of this chapter. Such scales when established and certified to the Department of Human Resource Management and the Comptroller shall be applicable in the stead of the scales established under the personnel plan.

E. (Effective until October 1, 2016) The Board of Visitors of public institutions of higher education shall establish policies for the designation of administrative and professional faculty positions at institutions of higher education. Those designations shall be reserved for positions that require a high level of administrative independence, responsibility, and oversight within the organization or specialized expertise within a given field as defined by the Board of Visitors. The authority under this subsection to establish policies for the designation of administrative and professional faculty positions shall be granted only to those institutions that meet the conditions prescribed in subsection B of § 23-38.88.

E. (Effective October 1, 2016) The Board of Visitors of public institutions of higher education shall establish policies for the designation of administrative and professional faculty positions at institutions of higher education. Those designations shall be reserved for positions that require a high level of administrative independence, responsibility, and oversight within the organization or specialized expertise within a given field as defined by the Board of Visitors. The authority under this subsection to establish policies for the designation of administrative and professional faculty positions shall be granted only to those institutions that meet the conditions prescribed in subsection A of § 23.1-1002.

Code 1950, § 2-79; 1956, c. 380; 1966, c. 677, § 2.1-111; 1968, c. 784; 1972, c. 582; 1973, c. 507; 2000, cc. 66, 657; 2001, c. 844; 2005, cc. 933, 945.

§ 2.2-2902. Use of tobacco products by state employees

No employee of or applicant for employment with the Commonwealth shall be required, as a condition of employment, to smoke or use tobacco products on the job, or to abstain from smoking or using tobacco products outside the course of his employment, provided that this section shall not apply to those classes of employees to which § 27-40.1 or § 51.1-813 is applicable.

1989, c. 511, § 15.1-29.18; 1997, c. 587, § 2.1-111.1; 2001, c. 844.

§ 2.2-2902.1. Rights of state employees to contact elected officials

Nothing in this chapter or Chapter 12 (§ 2.2-1200 et seq.) of this title shall be construed to prohibit or otherwise restrict the right of any state employee to express opinions to state or local elected officials on matters of public concern, nor shall a state employee be subject to acts of retaliation because the employee has expressed such opinions.

For the purposes of this section "matters of public concern" means those matters of interest to the community as a whole, whether for social, political, or other reasons and shall include discussions that disclose any (i) evidence of corruption, impropriety, or other malfeasance on the part of government officials; (ii) violations of law; or (iii) incidence of fraud, abuse, or gross mismanagement.

2005, c. 483.

§ 2.2-2903. Grade or rating increase and other preferences for veterans and their surviving spouses and children, and members of the National Guard

A. In a manner consistent with federal and state law, if any veteran, or surviving spouse, or child, or member of the National Guard applies for employment with the Commonwealth that is based on the passing of any written examination, the grade or rating of the veteran, surviving spouse, or child on such examination shall be increased by five percent. However, if the veteran has a service-connected disability rating fixed by the U.S. Department of Veterans Affairs, his grade or rating shall be increased by 10 percent on such written examination. Such increases shall apply only if the veteran passes such examination.

B. In a manner consistent with federal and state law, if any veteran, surviving spouse, or child, applies for employment with the Commonwealth that is not based on the passing of any

examination, the veteran, surviving spouse, or child, shall be given preference by the Commonwealth during the selection process, provided that the veteran, surviving spouse, or child, meets all of the knowledge, skill, and ability requirements for the available position. Additional consideration shall also be given to veterans who have a service-connected disability rating fixed by the U.S. Department of Veterans Affairs. The Department of Human Resource Management shall develop and distribute guidelines as an addendum to the Hiring Policy for Executive Branch agencies to provide guidance to agencies to comply with the preference of this section.

C. A member of the National Guard applying for a position or job classification under this chapter and possessing the necessary qualifications for such position or job classification shall be entitled to a separate preference as provided in this subsection. When a member of the National Guard or a veteran has applied for a position or job classification that requires an assessment using numerical ratings, points equal to five percent of the total points available from the assessment device or devices shall be added to the passing score of the applicant member of the National Guard or veteran. In an assessment not using numerical ratings, consideration shall be afforded to a member of the National Guard provided that member meets all of the knowledge, skill, and ability requirements for the available position.

The preference under this subsection shall not be applied for a position that is limited to state employees. In addition, the preference provided by this subsection shall not be applied if any other applicant for the position or job classification is (i) a veteran or (ii) a former prisoner of war.

D. If any veteran, or surviving spouse, or child, or member of the National Guard is denied employment with the Common-wealth, he shall be entitled, to the extent permitted by law, to request and inspect information regarding the reasons for such denial.

E. As used in this section, unless the context requires a different meaning:

"Child" means any surviving child or children under the age of 27 years of a veteran as defined herein who was killed in the line of duty.

"Member of the National Guard" means a person who (i) is presently serving as a member of the Virginia National Guard and (ii) has satisfactorily completed required initial active-duty service.

"Surviving spouse" means the surviving spouse of a veteran as defined herein who was killed in the line of duty.

"Veteran" means any person who has received an honorable discharge and (i) has provided more than 180 consecutive days of full-time, active-duty service in the armed forces of the United States or reserve components thereof, including the National Guard, or (ii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

Code 1950, § 2-80; 1952, c. 119; 1966, c. 677, § 2.1-112; 1985, c. 115; 1997, c. 309; 2001, c. 844; 2005, c. 413; 2007, cc. 336, 605; 2012, cc. 266, 269, 287.

§ 2.2-2903.1. State employees ordered to active military service

A. As used in this section, unless the context requires a different meaning:

"Active military duty" means federally funded military duty as (i) a member of the armed forces of the United States on active duty pursuant to Title 10 U.S.C. or (ii) a member of the Virginia National Guard on active duty pursuant to either Title 10 or Title 32 U.S.C.

"State employee" means any person who is regularly employed full time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of, and whose compensation is payable, no more often than biweekly, in whole or in part, by the Commonwealth or any department, institution or agency thereof.

B. For any state employee who has been ordered to active military service in the armed forces of the United States or in the organized reserve forces of any of the armed services of the United States or of the Virginia National Guard, the Commonwealth shall allow the use of accrued annual leave for active military duty according to personnel policies developed by the Department of Human Resource Management.

2003, c. 789.

§ 2.2-2904. Classification of persons who have passed certified professional secretary examination

Clerical personnel who have passed all parts of the certified professional secretary examination, evidenced by certification by the Institute for Certifying Secretaries, a department of the National Secretaries Association (International), or the professional legal secretary examination, evidenced by certification by the Certifying Board of the National Association of Legal Secretaries (International), shall be assured that this certification will be taken into consideration when opportunity for promotion becomes available.

1975, c. 393, § 2.1-114.1; 1977, c. 104; 2001, c. 844.

§ 2.2-2905. Certain officers and employees exempt from chapter

The provisions of this chapter shall not apply to:

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

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

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

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

5. Members of boards and commissions however selected;

6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;

7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;

8. The presidents and teaching and research staffs of state educational institutions;

9. Commissioned officers and enlisted personnel of the National Guard;

10. Student employees in institutions of learning and patient or inmate help in other state institutions;

11. Upon general or special authorization of the Governor, laborers, temporary employees, and employees compensated on an hourly or daily basis;

12. County, city, town, and district officers, deputies, assistants, and employees;

13. The employees of the Virginia Workers' Compensation Commission;

14. The officers and employees of the Virginia Retirement System;

15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, The Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History, the New College Institute, the Southern Virginia Higher Education Center, and The Library of Virginia, and approved by the Director of the Department of Human Resource Management as requiring specialized and professional training;

16. Employees of the Virginia Lottery;

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

18. Employees of the Virginia Commonwealth University Health System Authority;

19. Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions shall be deemed to serve on an employment-at-will basis. An agency may not exceed two employees who serve in this exempt capacity;

21. Employees of Virginia Correctional Enterprises. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

22. Officers and employees of the Virginia Port Authority;

23. Employees of the Virginia College Savings Plan;

24. Directors of state facilities operated by the Department of Behavioral Health and Developmental Services employed or reemployed by the Commissioner after July 1, 1999, under a contract pursuant to § 37.2-707. Such employees shall remain subject to the provisions of the State Grievance Procedure (§ 2.2-3000 et seq.);

25. Employees of the Virginia Foundation for Healthy Youth. Such employees shall be treated as state employees for purposes of participation in the Virginia Retirement System, health insurance, and all other employee benefits offered by the Commonwealth to its classified employees;

26. Employees of the Virginia Indigent Defense Commission;

27. (Effective until October 1, 2016) Any chief of a campus police department that has been designated by the governing body of a public institution of higher education as exempt, pursuant to § 23-232; and

27. (Effective October 1, 2016) Any chief of a campus police department that has been designated by the governing body of a public institution of higher education as exempt, pursuant to § 23.1-809; and

28. (Effective July 1, 2018) The Chief Executive Officer, agents, officers, and employees of the Virginia Alcoholic Beverage Control Authority.

Code 1950, § 2-84; 1966, c. 677, § 2.1-116; 1973, c. 401; 1981, c. 8; 1982, c. 582; 1984, cc. 290, 703; 1985, c. 596; 1987, c. 531; 1989, c. 560; 1990, c. 937; 1992, Sp. Sess., c. 5; 1993, c. 510; 1994, cc. 48, 64, 653; 1995, c. 757; 1996, cc. 53, 905, 933, 995, 1046; 1997, cc. 232, 711, 785, 861; 1999, c. 576; 2000, cc. 66, 382, 400, 657, 720; 2001, c. 844; 2002, cc. 271, 572; 2003, c. 652; 2005, c. 716; 2007, c. 192; 2009, cc. 424, 554, 589, 596, 813, 840; 2013, c. 571; 2014, c. 225; 2015, cc. 38, 221, 730.

Chapter 30 - STATE GRIEVANCE PROCEDURE

§ 2.2-3000. Policy of the Commonwealth; responsibilities of state agencies under this chapter

A. It shall be the policy of the Commonwealth, as an employer, to encourage the resolution of employee problems and complaints. To that end, employees shall be able to discuss freely, and without retaliation, their concerns with their immediate supervisors and management. To the extent that such concerns cannot be resolved informally, the grievance procedure shall afford an immediate and fair method for the resolution of employment disputes that may arise between state agencies and those employees who have access to the procedure under § 2.2-3001.

B. To fully achieve the objectives of this chapter and to create uniformity, each agency in the executive branch of state government shall:

1. Require supervisory personnel to be trained in the grievance procedure, personnel policies, and conflict resolution;

2. Familiarize employees with their grievance rights and promote the services of the Department of Human Resource Management;

3. Cooperate with investigations conducted pursuant to the authority granted by clause (iii) of subdivision 4 of § 2.2-1202.1;

4. Participate in the mediation program;

5. Evaluate supervisors on the effectiveness of employee relations management, including, but not limited to, their handling of grievances; and

6. Recognize the right of employees to fully participate in the grievance process without retaliation.

C. The Department of Human Resource Management shall monitor agencies' activities under this section.

1995, cc. 770, 818, §§ 2.1-116.04, 2.1-116.05; 1996, cc. 164, 869; 1999, cc. 703, 726; 2000, cc. 947, 1006; 2001, c. 844; 2004, c. 674; 2012, cc. 803, 835.

§ 2.2-3001. State employees

A. Unless exempted by law, all nonprobationary state employees shall be covered by the grievance procedure established pursuant to this chapter and any regulations adopted pursuant thereto. Employees not covered by the grievance procedure may be covered by an alternative grievance procedure.

B. The Office of the Attorney General and every legislative, judicial, and independent agency that is not subject to the state grievance procedure shall establish and administer a grievance procedure.

1995, cc. 770, 818, § 2.1-116.09; 1996, cc. 164, 869; 1997, c. 711; 1998, c. 245; 2000, cc. 947, 1006; 2001, c. 844.

§ 2.2-3002. Exemptions from chapter

The provisions of this chapter shall not apply to:

1. Appointees of elected groups or individuals except as provided in subsection B of § 2.2-3001;

2. Agency heads or chief executive officers of government agencies and public institutions of higher education appointed by boards and commissions;

3. Law-enforcement officers as defined in § 9.1-500 whose grievances are subject to Chapter 5 (§ 9.1-500 et seq.) and who have elected to resolve such grievances under those provisions; and

4. Employees in positions designated in § 2.2-2905 as exempt from the Virginia Personnel Act (§ 2.2-2900 et seq.).

1995, cc. 770, 818, § 2.1-116.013; 2001, c. 844.

§ 2.2-3003. Grievance procedure generally

A. As part of the Commonwealth's program of employee relations management, the Department of Human Resource Management shall develop a grievance procedure that includes not more than three successively higher grievance resolution steps and a formal hearing as provided in this chapter. However, grievances involving dismissals due to formal discipline or unsatisfactory job performance shall proceed directly to a formal hearing, omitting the grievance resolution steps, the face-to-face meeting specified in subsection D, and the agency head qualification determination specified in subsection D of § 2.2-3004.

B. Prior to initiating a written grievance, the employee shall be encouraged to pursue an informal complaint with his immediate supervisor. The supervisor shall have authority to resolve the complaint if it involves actions within his control.

C. An employee may pursue a formal written grievance through the grievance resolution steps if the complaint has been presented to management within 30 calendar days of the employee's knowledge of the event that gave rise to the complaint. Employees' rights to pursue grievances shall not be used to harass or otherwise impede the efficient operations of government.

D. Except as provided in subsection A, upon receipt of a timely written complaint, management shall review the grievance and respond to the merits thereof. Each level of management review shall have the authority to provide the employee with a remedy, subject to the agency head's approval. At least one face-to-face meeting between the employee and management shall be required. The persons who may be present at this meeting are the employee, the appropriate manager, an individual selected by the employee, and an individual selected by the manager. Witnesses may be called by either party.

E. Absent just cause, all documents, as defined in the Rules of the Supreme Court of Virginia, relating to the actions grieved shall be made available, upon request from a party to the grievance, by the opposing party, in a timely fashion. Upon such request a party shall have a duty to search its records to ensure that all such relevant documents are provided. Documents pertaining to nonparties that are relevant to the grievance shall be produced in such a manner as to preserve the privacy of the individuals not personally involved in the grievance. A party shall not be required to create a document if the document does not exist.

F. All time limitations prescribed in the grievance procedure, including, but not limited to, submission of an initial complaint and employee appeal of management decisions, shall be reasonable, specific, and equally applicable to the agency and the employee. Expedited grievance procedures shall be established for terminations, demotions, suspensions, and lost wages or salaries.

G. Within five workdays of the receipt of a written notice of noncompliance, failure of the employee or the agency to comply with a substantial procedural requirement of the grievance procedure without just cause may result in a decision against the noncomplying party on any qualified issue. Written notice of noncompliance by the agency shall be made to the agency head. The

Director of the Department of Human Resource Management shall render all decisions related to procedural compliance, and such decisions shall contain the reasons for such decision and shall be final.

H. Grievances qualified pursuant to § 2.2-3004 that have not been resolved through the grievance resolution steps shall advance to a hearing that shall be the final step in the grievance procedure.

1995, cc. 770, 818, § 2.1-116.05; 1996, cc. 164, 869; 1999, cc. 703, 726; 2000, cc. 947, 1006; 2001, c. 844; 2003, c. 252; 2004, c. 674; 2012, cc. 56, 349, 803, 835.

§ 2.2-3004. Grievances qualifying for a grievance hearing; grievance hearing generally

A. A grievance qualifying for a hearing shall involve a complaint or dispute by an employee relating to the following adverse employment actions in which the employee is personally involved, including but not limited to (i) formal disciplinary actions, including suspensions, demotions, transfers and assignments, and dismissals resulting from formal discipline or unsatisfactory job performance; (ii) the application of all written personnel policies, procedures, rules and regulations where it can be shown that policy was misapplied or unfairly applied; (iii) discrimination on the basis of race, color, religion, political affiliation, age, disability, national origin or sex; (iv) arbitrary or capricious performance evaluations; (v) acts of retaliation as the result of the use of or participation in the grievance procedure or because the employee has complied with any law of the United States or of the Commonwealth, has reported any violation of such law to a governmental authority, has sought any change in law before the Congress of the United States or the General Assembly, or has reported an incidence of fraud, abuse, or gross mismanagement; and (vi) retaliation for exercising any right otherwise protected by law.

B. Management reserves the exclusive right to manage the affairs and operations of state government. Management shall exercise its powers with the highest degree of trust. In any employment matter that management precludes from proceeding to a grievance hearing, management's response, including any appropriate remedial actions, shall be prompt, complete, and fair.

C. Complaints relating solely to the following issues shall not proceed to a hearing: (i) establishment and revision of wages, salaries, position classifications, or general benefits; (ii) work activity accepted by the employee as a condition of employment or which may reasonably be expected to be a part of the job content; (iii) contents of ordinances, statutes or established personnel policies, procedures, and rules and regulations; (iv) methods, means, and personnel by which work activities are to be carried on; (v) termination, layoff, demotion, or suspension from duties because of lack of work, reduction in work force, or job abolition; (vi) hiring, promotion, transfer, assignment, and retention of employees within the agency; and (vii) relief of employees from duties of the agency in emergencies.

D. Except as provided in subsection A of § 2.2-3003, decisions regarding whether a grievance qualifies for a hearing shall be made in writing by the agency head or his designee within five workdays of the employee's request for a hearing. A copy of the decision shall be sent to the employee.

The employee may appeal the denial of a hearing by the agency head to the Director of the Department of Human Resource Management (the Director). Upon receipt of an appeal, the agency shall transmit the entire grievance record to the Department of Human Resource Management within five workdays. The Director shall render a decision on whether the employee is entitled to a hearing upon the grievance record and other probative evidence.

E. The hearing pursuant to § 2.2-3005 shall be held in the locality in which the employee is employed or in any other locality agreed to by the employee, employer, and hearing officer. The employee and the agency may be represented by legal counsel or a lay advocate, the provisions of § 54.1-3904 notwithstanding. The employee and the agency may call witnesses to present testimony and be cross-examined.

1995, cc. 770, 818, § 2.1-116.06; 1996, cc. 164, 869; 2001, c. 844; 2012, cc. 56, 349, 803, 835.

§ 2.2-3005. Hearing officers; duties

A. Nothing in this chapter shall create, nor shall be construed to create, a property interest in selection or assignment to serve as a hearing officer for grievance hearings.

B. The Director of the Department of Human Resource Management shall assign a hearing officer to conduct the grievance hearing. All hearing officers shall be selected, on a rotating basis, (i) from the list of administrative hearing officers maintained by the Supreme Court of Virginia pursuant to § 2.2-4024 or (ii) from attorneys hired as classified employees by the Department through a competitive selection process. Hearing officer fees shall be reasonable, in accordance with compensation guidelines developed by the Department of Human Resource Management. In addition to the training requirements imposed by the Supreme Court, each hearing officer shall meet the criteria established by the Director pursuant to subdivision 6 of § 2.2-1202.1 and attend annually at least one day of training in employment law or state personnel policies and organizations. The training shall be conducted by the Department of Human Resource Management or an organization approved by the Virginia State Bar for continuing legal education.

C. Hearing officers shall have the following powers and duties:

1. Hold conferences for the settlement or simplification of issues;

2. Dispose of procedural requests;

3. Issue orders requiring testimony or the production of evidence;

4. Administer oaths and affirmations;

5. Receive probative evidence; exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttals, or cross-examinations; rule upon offers of proof; and oversee a verbatim recording of the evidence;

6. Receive and consider evidence in mitigation or aggravation of any offense charged by an agency in accordance with rules established by the Department of Human Resource Management pursuant to § 2.2-1202.1; and

7. Take other actions as necessary or specified in the grievance procedure.

1995, cc. 770, 818, § 2.1-116.07; 1998, cc. 263, 438; 1999, c. 713; 2000, cc. 66, 657, 947, 1006; 2001, c. 844; 2004, c. 674; 2012, cc. 803, 835.

§ 2.2-3005.1. Scope of hearing officer's decision; agency cooperation; cost of hearing; decision of hearing officer

A. For those issues qualified for a hearing, the hearing officer may order appropriate remedies. Relief may include (i) reinstatement to the same position, or if the position is filled, to an equivalent position, (ii) back pay, (iii) full reinstatement of fringe benefits and seniority rights, (iv) mitigation or reduction of the agency disciplinary action, or (v) any combination of these remedies. In grievances challenging discharge, if the hearing officer finds that the employee has substantially prevailed on the merits of the grievance, the employee shall be entitled to recover reasonable attorney fees, unless special circumstances would make an award unjust. All awards of relief, including attorney fees, by a hearing officer must be in accordance with rules established by the Department of Human Resource Management.

B. The agency from which the grievance arises shall bear the costs for the hearing officer and other associated hearing expenses including the grievant's attorney fees that the hearing officer may award.

C. The decision of the hearing officer shall (i) be in writing, (ii) contain findings of fact as to the material issues in the case and the basis for those findings, including any award of reasonable attorney fees pursuant to this section, and (iii) be final and binding if consistent with law and policy.

D. The provisions of this section relating to the award of attorney fees shall not apply to any local government or agency thereof that is otherwise subject to the grievance procedure set forth in this chapter.

2004, c. 674; 2011, c. 595; 2012, cc. 803, 835.

§ 2.2-3006. Review of hearing decisions; costs

A. Upon the request of a party to a grievance hearing for an administrative review of the hearing decision, the Director of the Department of Human Resource Management shall determine, within 30 days of the conclusion of any other administrative reviews, whether the hearing decision is consistent with policy.

B. Within 30 days of a final decision, a party may appeal on the grounds that the determination is contradictory to law by filing a notice of appeal with the clerk of the circuit court in the jurisdiction in which the grievance arose. The agency shall request and receive prior approval of the

Director before filing a notice of appeal. After a notice of appeal has been filed by either party, the agency shall then transmit a copy of the grievance record to the clerk of the court. The court, on motion of a party, shall issue a writ of certiorari requiring transmission of the record on or before a certain date. Within 30 days of receipt of the grievance record, the court, sitting without a jury, shall hear the appeal on the record. The court may affirm the decision or may reverse or modify the decision. The decision of the court shall be rendered no later than the fifteenth day from the date of the conclusion of the hearing. The circuit court hearing shall be at no cost to the Commonwealth or the grievant.

C. The hearing officer's final decision shall be effective from the latter of the date issued or the date of the conclusion of any administrative review and judicial appeal, and shall be implemented immediately thereafter, unless circumstances beyond the control of the agency delay such implementation.

D. Either party may petition the circuit court having jurisdiction in the locality in which the grievance arose for an order requiring implementation of the final decision of a hearing officer.

E. The court shall award reasonable attorneys' fees and costs to the employee if the employee substantially prevails on the merits of a case brought under subsection B or D.

2000, cc. 947, 1006, § 2.1-116.07:1; 2001, cc. 393, 420, 844; 2003, c. 252; 2004, c. 229; 2012, cc. 56, 349.

§ 2.2-3007. Certain employees of the Departments of Corrections and Juvenile Justice

A. Employees of the Departments of Corrections and Juvenile Justice who work in institutions or juvenile correctional centers or have client, inmate, or resident contact and who are terminated on the grounds of client, inmate, or resident abuse, criminal conviction, or as a result of being placed on probation under the provisions of § 18.2-251, may appeal their termination only through the Department of Human Resource Management applicable grievance procedures, which shall not include successive grievance steps or the formal hearing provided in § 2.2-3005.

B. If no resolution is reached, the employee may advance the grievance to the circuit court of the jurisdiction in which the grievance occurred for a de novo hearing on the merits of the termination. In its discretion, the court may refer the matter to a commissioner in chancery to take such evidence as may be proper and to make a report to the court. Both the grievant and the respondent may call upon witnesses and be represented by legal counsel or other representatives before the court or the commissioner in chancery. Such representatives may examine, cross-examine, question and present evidence on behalf of the grievant or respondent before the court or commissioner in chancery without being in violation of the provisions of § 54.1-3904.

C. A termination shall be upheld unless shown to have been unwarranted by the facts or contrary to law or policy.

1995, cc. 770, 818, § 2.1-116.08; 1996, cc. 755, 914; 2001, cc. 393, 420, 844; 2014, c. 223.

§ 2.2-3008. Employees of local constitutional officers

Constitutional officers shall not be required to provide a grievance procedure for their employees; however, such employees may be accepted in a local governing body's grievance procedure or personnel system if agreed to by the constitutional officer and the local governing body.

1995, cc. 770, 818, § 2.1-116.012; 1996, cc. 164, 869; 2001, c. 844.

Chapter 30.1 - THE FRAUD AND ABUSE WHISTLE BLOWER PROTECTION ACT

§ 2.2-3009. Policy

It shall be the policy of the Commonwealth that citizens of the Commonwealth and employees of governmental agencies be freely able to report instances of wrongdoing or abuse committed by governmental agencies or independent contractors of governmental agencies.

2009, c. 340; 2014, c. 403; 2016, c. 292.

§ 2.2-3010. Definitions

As used in this chapter:

"Abuse" means an employer's or employee's conduct or omissions that result in substantial misuse, destruction, waste, or loss of funds or resources belonging to or derived from federal, state, or local government sources.

"Appropriate authority" means a federal, state, or local agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or abuse; or a member, officer, agent, representative, or supervisory employee of the agency or organization. The term also includes the Office of the Attorney General, the Office of the State Inspector General, and the General Assembly and its committees having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics, or abuse.

"Employee" means any person who is regularly employed full time on either a salaried or wage basis, whose tenure is not restricted as to temporary or provisional appointment, in the service of and whose compensation is payable, no more often than biweekly, in whole or in part, by a governmental agency.

"Employer" means a person supervising one or more employees, including the employee filing a good faith report, a superior of that supervisor, or an agent of the governmental agency.

"Good faith report" means a report of conduct defined in this chapter as wrongdoing or abuse that is made without malice and that the person making the report has reasonable cause to believe is true.

"Governmental agency" means (i) any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act and any independent agency; (ii) any county, city, or town or local or regional governmental authority; and (iii) any local school division as defined in § 22.1-280.2:2.

"Misconduct" means conduct or behavior by an employee that is inconsistent with state, local, or agency standards for which specific corrective or disciplinary action is warranted.

"Whistle blower" means an employee who witnesses or has evidence of wrongdoing or abuse and who makes or demonstrates by clear and convincing evidence that he is about to make a good faith report of, or testifies or is about to testify to, the wrongdoing or abuse to one of the employee's superiors, an agent of the employer, or an appropriate authority. "Whistle blower" includes a citizen of the Commonwealth who witnesses or has evidence of wrongdoing or abuse and who makes or demonstrates by clear and convincing evidence that he is about to make a good faith report of, or testifies or is about to testify to, the wrongdoing or abuse to an appropriate authority.

"Wrongdoing" means a violation, which is not of a merely technical or minimal nature, of a federal or state law or regulation, local ordinance, or a formally adopted code of conduct or ethics of a professional organization designed to protect the interests of the public or employee.

2009, c. 340; 2011, cc. 798, 871; 2014, c. 403; 2015, c. 316; 2016, c. 292.

§ 2.2-3010.1. Discrimination and retaliatory actions against citizen whistle blowers prohibited; good faith required; other remedies

A. No governmental agency may threaten or otherwise discriminate or retaliate against a citizen whistle blower because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action.

B. To be protected by the provisions of this chapter, a citizen of the Commonwealth who discloses information about suspected wrongdoing or abuse shall do so in good faith and upon a reasonable belief that the information is accurate. Disclosures that are reckless or that the citizen knew or should have known were false, confidential by law, or malicious shall not be deemed good faith reports and shall not be protected.

C. Any citizen whistle blower disclosing information of wrongdoing or abuse under this chapter where the disclosure results in a recovery of at least $5,000 may file a claim for reward under the Fraud and Abuse Whistle Blower Reward Fund established in § 2.2-3014.

D. Except for the provisions of subsection F of § 2.2-3011, nothing in this chapter shall be construed to limit the remedies provided by the Virginia Fraud Against Taxpayers Act (§ 8.01-216.1 et seq.).

2014, c. 403; 2016, c. 292.

§ 2.2-3011. Discrimination and retaliatory actions against whistle blowers prohibited; good faith required; remedies

A. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle blower whether acting on his own or through a person acting on his behalf or under his direction.

B. No employer may discharge, threaten, or otherwise discriminate or retaliate against a whistle blower, in whole or in part, because the whistle blower is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing, or inquiry by an appropriate authority or in a court action.

C. To be protected by the provisions of this chapter, an employee who discloses information about suspected wrongdoing or abuse shall do so in good faith and upon a reasonable belief that the information is accurate. Disclosures that are reckless or the employee knew or should have known were false, confidential by law, or malicious shall not be deemed good faith reports and shall not be protected.

D. In addition to the remedies provided in § 2.2-3012, any whistle blower may bring a civil action for violation of this section in the circuit court of the jurisdiction where the whistle blower is employed. In a proceeding commenced against any employer under this section, the court, if it finds that a violation was willfully and knowingly made, may impose upon such employer that is a party to the action, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than $500 nor more than $2,500, which amount shall be paid into the Fraud and Abuse Whistle Blower Reward Fund. The court may also order appropriate remedies, including (i) reinstatement to the same position or, if the position is filled, to an equivalent position; (ii) back pay; (iii) full reinstatement of fringe benefits and seniority rights; or (iv) any combination of these remedies. The whistle blower may be entitled to recover reasonable attorney fees and costs. No action brought under this subsection shall be brought more than three years after the date the unlawful discharge, discrimination, or retaliation occurs. Any whistle blower proceeding under this subsection shall not be required to exhaust existing internal procedures or other administrative remedies.

E. Nothing in this chapter shall prohibit an employer from disciplining or discharging a whistle blower for his misconduct or any violation of criminal law.

F. No court shall have jurisdiction over an action brought under § 8.01-216.5 based on information discovered by a present or former employee of the Commonwealth during the course of his employment unless that employee first, in good faith, has exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the Commonwealth failed to act on the information provided within a reasonable period of time.

2009, c. 340; 2014, cc. 335, 403.

§ 2.2-3012. Application of state or local grievance procedure; other remedies

A. Any whistle blower covered by the state grievance procedure (§ 2.2-3000 et seq.) or a local grievance procedure established under § 15.2-1506 may initiate a grievance alleging retaliation and requesting relief through that procedure.

B. Any whistle blower disclosing information of wrongdoing or abuse under this chapter where the disclosure results in a recovery of at least $5,000 may file a claim for reward under the Fraud and Abuse Whistle Blower Reward Fund established in § 2.2-3014.

C. Except for the provisions of subsection F of § 2.2-3011, nothing in this chapter shall be construed to limit the remedies provided by the Virginia Fraud Against Taxpayers Act (§ 8.01-216.1 et seq.).

2009, c. 340; 2014, c. 403; 2016, cc. 292, 293.

§ 2.2-3013. Notice to employees of whistle blower protection

An employer shall post notices and use other appropriate means to notify employees and keep them informed of the protection and obligations set forth in the provisions of this chapter.

2009, c. 340.

§ 2.2-3014. Fraud and Abuse Whistle Blower Reward Fund

A. From such funds as may be authorized by the General Assembly, there is hereby created in the state treasury a special nonreverting fund to be known as the Fraud and Abuse Whistle Blower Reward Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller and shall be administered by the State Inspector General. All moneys recovered by the State Inspector General as the result of whistle blower activity and alerts originating with the Office of the State Inspector General shall be deposited in the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Except as provided in subsection B, any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. Moneys in the Fund shall be used solely to (i) provide monetary rewards to persons who have disclosed information of wrongdoing or abuse under this chapter and the disclosure results in a recovery of at least $5,000 or (ii) support the administration of the Fund, defray Fund advertising costs, or subsidize the operation of the Fraud, Waste and Abuse Hotline (previously known as the State Employee Fraud, Waste and Abuse Hotline).

B. By the end of each calendar quarter and upon authorization of the State Inspector General, 85 percent of all sums recovered shall be remitted to the institutions or governmental agencies on whose behalf the recovery was secured by the State Inspector General unless otherwise directed by a court of law. Each such institution or governmental agency on whose behalf the recovery was secured by the State Inspector General shall receive an amount equal to 85 percent of the actual amount recovered by the State Inspector General on its behalf.

C. The amount of the reward shall be up to 10 percent of the actual sums recovered by the Commonwealth as a result of the disclosure of the wrongdoing or abuse. Regardless of the sums recovered, at no time shall the amount of any reward, even if less than 10 percent, exceed the balance of the Fund. Reward disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by the State Inspector General. In

the event that multiple whistle blowers contemporaneously report the same qualifying incident or occurrence of wrongdoing or abuse, the State Inspector General in his sole discretion may split the reward of up to 10 percent among the multiple whistle blowers. The decision of the State Inspector General regarding the allocation of the rewards shall be final and binding on all parties and shall not be appealable.

D. Five percent of all sums recovered shall be retained in the Fund to support the administration of the Fund, defray advertising costs, and subsidize the operation of the Fraud, Waste and Abuse Hotline. Expenditures for administrative costs for management of the Fund shall be managed as approved by the State Inspector General.

E. The Office of the State Inspector General shall promulgate regulations for the proper administration of the Fund including eligibility requirements and procedures for filing a claim. The Office of the State Inspector General shall submit an annual report to the General Assembly summarizing the activities of the Fund.

2009, c. 340; 2011, cc. 798, 871; 2013, cc. 572, 690; 2014, c. 403; 2016, c. 292.

Chapter 31 - STATE AND LOCAL GOVERNMENT CONFLICT OF INTERESTS ACT

Article 1 - GENERAL PROVISIONS

§ 2.2-3100. Policy; application; construction

The General Assembly, recognizing that our system of representative government is dependent in part upon (i) citizen legislative members representing fully the public in the legislative process and (ii) its citizens maintaining the highest trust in their public officers and employees, finds and declares that the citizens are entitled to be assured that the judgment of public officers and employees will be guided by a law that defines and prohibits inappropriate conflicts and requires disclosure of economic interests. To that end and for the purpose of establishing a single body of law applicable to all state and local government officers and employees on the subject of conflict of interests, the General Assembly enacts this State and Local Government Conflict of Interests Act so that the standards of conduct for such officers and employees may be uniform throughout the Commonwealth.

This chapter shall supersede all general and special acts and charter provisions which purport to deal with matters covered by this chapter except that the provisions of §§ 15.2-852, 15.2-2287, 15.2-2287.1, and 15.2-2289 and ordinances adopted pursuant thereto shall remain in force and effect. The provisions of this chapter shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title and ordinances adopted pursuant to § 2.2-3104.2 regulating receipt of gifts.

The provisions of this chapter do not preclude prosecution for any violation of any criminal law of the Commonwealth, including Articles 2 (Bribery and Related Offenses, § 18.2-438 et seq.) and 3

(Bribery of Public Servants and Party Officials, § 18.2-446 et seq.) of Chapter 10 of Title 18.2, and do not constitute a defense to any prosecution for such a violation.

This chapter shall be liberally construed to accomplish its purpose.

1987, Sp. Sess., c. 1, § 2.1-639.1; 1990, c. 672; 2001, c. 844; 2003, c. 694; 2008, c. 532; 2014, cc. 792, 804.

§ 2.2-3100.1. Copy of chapter; review by officers and employees

Any person required to file a disclosure statement of personal interests pursuant to subsections A or B of § 2.2-3114, subsections A or B of § 2.2-3115 or § 2.2-3116 shall be furnished by the public body's administrator a copy of this chapter within two weeks following the person's election, reelection, employment, appointment or reappointment.

All officers and employees shall read and familiarize themselves with the provisions of this chapter.

2004, cc. 134, 392.

§ 2.2-3101. Definitions

As used in this chapter, unless the context requires a different meaning:

"Advisory agency" means any board, commission, committee or post which does not exercise any sovereign power or duty, but is appointed by a governmental agency or officer or is created by law for the purpose of making studies or recommendations, or advising or consulting with a governmental agency.

"Affiliated business entity relationship" means a relationship, other than a parent-subsidiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that may be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person owns or manages the two entities, there are common or commingled funds or assets, the business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis, or there is otherwise a close working relationship between the entities.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Candidate" means a person who seeks or campaigns for an office of the Commonwealth or one of its governmental units in a general, primary, or special election and who is qualified to have his name placed on the ballot for the office. The candidate shall become subject to the provisions of this chapter upon the filing of a statement of qualification pursuant to § 24.2-501. The State Board of Elections or general registrar shall notify each such candidate of the provisions of this

chapter. Notification made by the general registrar shall consist of information developed by the State Board of Elections.

"Contract" means any agreement to which a governmental agency is a party, or any agreement on behalf of a governmental agency that involves the payment of money appropriated by the General Assembly or a political subdivision, whether or not such agreement is executed in the name of the Commonwealth, or some political subdivision thereof. "Contract" includes a subcontract only when the contract of which it is a part is with the officer's or employee's own governmental agency.

"Council" means the Virginia Conflict of Interest and Ethics Advisory Council established in § 30-355.

"Employee" means all persons employed by a governmental or advisory agency, unless otherwise limited by the context of its use.

"Financial institution" means any bank, trust company, savings institution, industrial loan association, consumer finance company, credit union, broker-dealer as defined in subsection A of § 13.1-501, or investment company or advisor registered under the federal Investment Advisors Act or Investment Company Act of 1940.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, local travel, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2; (v) any gift related to the private profession or occupation of an officer or employee or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ 24.2-945 et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or commission, or a national conference where attendance is approved by the House

Committee on Rules or its Chairman or the Senate Committee on Rules or its Chairman; (xiii) travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; (xiv) gifts with a value of less than $20; or (xv) gifts from relatives or personal friends. For the purpose of this definition, "relative" means the donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse. For the purpose of this definition, "personal friend" does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2; (b) a lobbyist's principal as defined in § 2.2-419; (c) for an officer or employee of a local governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee; or (d) for an officer or employee of a state governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the Commonwealth. For purposes of this definition, "person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

"Governmental agency" means each component part of the legislative, executive or judicial branches of state and local government, including each office, department, authority, post, commission, committee, and each institution or board created by law to exercise some regulatory or sovereign power or duty as distinguished from purely advisory powers or duties. Corporations organized or controlled by the Virginia Retirement System are "governmental agencies" for purposes of this chapter.

"Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee.

"Officer" means any person appointed or elected to any governmental or advisory agency including local school boards, whether or not he receives compensation or other emolument of office. Unless the context requires otherwise, "officer" includes members of the judiciary.

"Parent-subsidiary relationship" means a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.

"Personal interest" means a financial benefit or liability accruing to an officer or employee or to a member of his immediate family. Such interest shall exist by reason of (i) ownership in a business if the ownership interest exceeds three percent of the total equity of the business; (ii) annual income that exceeds, or may reasonably be anticipated to exceed, $5,000 from ownership in real

or personal property or a business; (iii) salary, other compensation, fringe benefits, or benefits from the use of property, or any combination thereof, paid or provided by a business or governmental agency that exceeds, or may reasonably be anticipated to exceed, $5,000 annually; (iv) ownership of real or personal property if the interest exceeds $5,000 in value and excluding ownership in a business, income, or salary, other compensation, fringe benefits or benefits from the use of property; (v) personal liability incurred or assumed on behalf of a business if the liability exceeds three percent of the asset value of the business; or (vi) an option for ownership of a business or real or personal property if the ownership interest will consist of clause (i) or (iv) above.

"Personal interest in a contract" means a personal interest that an officer or employee has in a contract with a governmental agency, whether due to his being a party to the contract or due to a personal interest in a business that is a party to the contract.

"Personal interest in a transaction" means a personal interest of an officer or employee in any matter considered by his agency. Such personal interest exists when an officer or employee or a member of his immediate family has a personal interest in property or a business or governmental agency, or represents or provides services to any individual or business and such property, business or represented or served individual or business (i) is the subject of the transaction or (ii) may realize a reasonably foreseeable direct or indirect benefit or detriment as a result of the action of the agency considering the transaction. Notwithstanding the above, such personal interest in a transaction shall not be deemed to exist where (a) an elected member of a local governing body serves without remuneration as a member of the board of trustees of a not-for-profit entity and such elected member or member of his immediate family has no personal interest related to the not-for-profit entity or (b) an officer, employee, or elected member of a local governing body is appointed by such local governing body to serve on a governmental agency, or an officer, employee, or elected member of a separate local governmental agency formed by a local governing body is appointed to serve on a governmental agency, and the personal interest in the transaction of the governmental agency is the result of the salary, other compensation, fringe benefits, or benefits provided by the local governing body or the separate governmental agency to the officer, employee, elected member, or member of his immediate family.

"State and local government officers and employees" shall not include members of the General Assembly.

"State filer" means those officers and employees required to file a disclosure statement of their personal interests pursuant to subsection A or B of § 2.2-3114.

"Transaction" means any matter considered by any governmental or advisory agency, whether in a committee, subcommittee, or other entity of that agency or before the agency itself, on which official action is taken or contemplated.

1987, Sp. Sess., c. 1, § 2.1-639.2; 1988, c. 536; 1992, c. 865; 1993, c. 303; 1994, cc. 74, 724; 1995, c. 495; 1996, c. 77; 1997, c. 641; 2001, c. 844; 2003, c. 694; 2004, cc. 134, 392; 2012, cc. 345, 771; 2013, c. 475; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774.

Article 2 - GENERALLY PROHIBITED AND UNLAWFUL CONDUCT

§ 2.2-3102. Application

This article applies to generally prohibited conduct that shall be unlawful and to state and local government officers and employees.

1987, Sp. Sess., c. 1, § 2.1-639.3; 2001, c. 844.

§ 2.2-3103. Prohibited conduct

No officer or employee of a state or local governmental or advisory agency shall:

1. Solicit or accept money or other thing of value for services performed within the scope of his official duties, except the compensation, expenses or other remuneration paid by the agency of which he is an officer or employee. This prohibition shall not apply to the acceptance of special benefits that may be authorized by law;

2. Offer or accept any money or other thing of value for or in consideration of obtaining employment, appointment, or promotion of any person with any governmental or advisory agency;

3. Offer or accept any money or other thing of value for or in consideration of the use of his public position to obtain a contract for any person or business with any governmental or advisory agency;

4. Use for his own economic benefit or that of another party confidential information that he has acquired by reason of his public position and which is not available to the public;

5. Accept any money, loan, gift, favor, service, or business or professional opportunity that reasonably tends to influence him in the performance of his official duties. This subdivision shall not apply to any political contribution actually used for political campaign or constituent service purposes and reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2;

6. Accept any business or professional opportunity when he knows that there is a reasonable likelihood that the opportunity is being afforded him to influence him in the performance of his official duties;

7. Accept any honoraria for any appearance, speech, or article in which the officer or employee provides expertise or opinions related to the performance of his official duties. The term "honoraria" shall not include any payment for or reimbursement to such person for his actual travel, lodging, or subsistence expenses incurred in connection with such appearance, speech, or article or in the alternative a payment of money or anything of value not in excess of the per diem deduction allowable under § 162 of the Internal Revenue Code, as amended from time to time. The pro-

hibition in this subdivision shall apply only to the Governor, Lieutenant Governor, Attorney General, Governor's Secretaries, and heads of departments of state government;

8. Accept a gift from a person who has interests that may be substantially affected by the performance of the officer's or employee's official duties under circumstances where the timing and nature of the gift would cause a reasonable person to question the officer's or employee's impartiality in the matter affecting the donor. Violations of this subdivision shall not be subject to criminal law penalties;

9. Accept gifts from sources on a basis so frequent as to raise an appearance of the use of his public office for private gain. Violations of this subdivision shall not be subject to criminal law penalties; or

10. Use his public position to retaliate or threaten to retaliate against any person for expressing views on matters of public concern or for exercising any right that is otherwise protected by law, provided, however, that this subdivision shall not restrict the authority of any public employer to govern conduct of its employees, and to take disciplinary action, in accordance with applicable law, and provided further that this subdivision shall not limit the authority of a constitutional officer to discipline or discharge an employee with or without cause.

1987, Sp. Sess., c. 1, § 2.1-639.4; 1994, cc. 663, 815, 851; 2001, c. 844; 2006, cc. 787, 892; 2015, c. 574.

§ 2.2-3103.1. Certain gifts prohibited

A. For purposes of this section:

"Person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

"Widely attended event" means an event at which at least 25 persons have been invited to attend or there is a reasonable expectation that at least 25 persons will attend the event and the event is open to individuals (i) who share a common interest, (ii) who are members of a public, civic, charitable, or professional organization, (iii) who are from a particular industry or profession, or (iv) who represent persons interested in a particular issue.

B. No officer or employee of a local governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of $100 or any combination of gifts with an aggregate value in excess of $100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the local agency of which he is an officer or an

employee. Gifts with a value of less than $20 are not subject to aggregation for purposes of this prohibition.

C. No officer or employee of a state governmental or advisory agency or candidate required to file the disclosure form prescribed in § 2.2-3117 or a member of his immediate family shall solicit, accept, or receive any single gift with a value in excess of $100 or any combination of gifts with an aggregate value in excess of $100 within any calendar year for himself or a member of his immediate family from any person that he or a member of his immediate family knows or has reason to know is (i) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4; (ii) a lobbyist's principal as defined in § 2.2-419; or (iii) a person, organization, or business who is or is seeking to become a party to a contract with the state governmental or advisory agency of which he is an officer or an employee or over which he has the authority to direct such agency's activities. Gifts with a value of less than $20 are not subject to aggregation for purposes of this prohibition.

D. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive a gift of food and beverages, entertainment, or the cost of admission with a value in excess of $100 when such gift is accepted or received while in attendance at a widely attended event and is associated with the event. Such gifts shall be reported on the disclosure form prescribed in § 2.2-3117.

E. Notwithstanding the provisions of subsections B and C, such officer or employee or a member of his immediate family may accept or receive a gift from a foreign dignitary with a value exceeding $100 for which the fair market value or a gift of greater or equal value has not been provided or exchanged. Such gift shall be accepted on behalf of the Commonwealth or a locality and archived in accordance with guidelines established by the Library of Virginia. Such gift shall be disclosed as having been accepted on behalf of the Commonwealth or a locality, but the value of such gift shall not be required to be disclosed.

F. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive certain gifts with a value in excess of $100 from a person listed in subsection B or C if such gift was provided to such officer, employee, or candidate or a member of his immediate family on the basis of a personal friendship. Notwithstanding any other provision of law, a person listed in subsection B or C may be a personal friend of such officer, employee, or candidate or his immediate family for purposes of this subsection. In determining whether a person listed in subsection B or C is a personal friend, the following factors shall be considered: (i) the circumstances under which the gift was offered; (ii) the history of the relationship between the person and the donor, including the nature and length of the friendship and any previous exchange of gifts between them; (iii) to the extent known to the person, whether the donor personally paid for the gift or sought a tax deduction or business reimbursement for the gift; and (iv) whether the donor has given the same or similar gifts to other persons required to file the disclosure form prescribed in § 2.2-3117 or 30-111.

G. Notwithstanding the provisions of subsections B and C, such officer, employee, or candidate or a member of his immediate family may accept or receive gifts of travel, including travel-related transportation, lodging, hospitality, food or beverages, or other thing of value, with a value in excess of $100 that is paid for or provided by a person listed in subsection B or C when the officer, employee, or candidate has submitted a request for approval of such travel to the Council and has received the approval of the Council pursuant to § 30-356.1. Such gifts shall be reported on the disclosure form prescribed in § 2.2-3117.

H. During the pendency of a civil action in any state or federal court to which the Commonwealth is a party, the Governor or the Attorney General or any employee of the Governor or the Attorney General who is subject to the provisions of this chapter shall not solicit, accept, or receive any gift from any person that he knows or has reason to know is a person, organization, or business that is a party to such civil action. A person, organization, or business that is a party to such civil action shall not knowingly give any gift to the Governor or the Attorney General or any of their employees who are subject to the provisions of this chapter.

I. The $100 limitation imposed in accordance with this section shall be adjusted by the Council every five years, as of January 1 of that year, in an amount equal to the annual increases for that five-year period in the United States Average Consumer Price Index for all items, all urban consumers (CPI-U), as published by the Bureau of Labor Statistics of the U.S. Department of Labor, rounded to the nearest whole dollar.

2014, cc. 792, 804; 2015, cc. 763, 777.

§ 2.2-3103.2. Return of gifts

No person shall be in violation of any provision of this chapter prohibiting the acceptance of a gift if (i) the gift is not used by such person and the gift or its equivalent in money is returned to the donor or delivered to a charitable organization within a reasonable period of time upon the discovery of the value of the gift and is not claimed as a charitable contribution for federal income tax purposes or (ii) consideration is given by the donee to the donor for the value of the gift within a reasonable period of time upon the discovery of the value of the gift provided that such consideration reduces the value of the gift to an amount not in excess of $100 as provided in subsection B or C of § 2.2-3103.1.

2015, cc. 763, 777.

§ 2.2-3104. Prohibited conduct for certain officers and employees of state government

For one year after the termination of public employment or service, no state officer or employee shall, before the agency of which he was an officer or employee, represent a client or act in a representative capacity on behalf of any person or group, for compensation, on matters related to legislation, executive orders, or regulations promulgated by the agency of which he was an officer or employee. This prohibition shall be in addition to the prohibitions contained in § 2.2-3103.

For the purposes of this section, "state officer or employee" shall mean (i) the Governor, Lieutenant Governor, Attorney General, and officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not, who are regularly employed on a full-time salaried basis; those officers and employees of executive branch agencies who report directly to the agency head; and those at the level immediately below those who report directly to the agency head and are at a payband 6 or higher and (ii) the officers and professional employees of the legislative branch designated by the joint rules committee of the General Assembly. For the purposes of this section, the General Assembly and the legislative branch agencies shall be deemed one agency.

To the extent this prohibition applies to the Governor's Secretaries, "agency" means all agencies assigned to the Secretary by law or by executive order of the Governor.

Any person subject to the provisions of this section may apply to the Council or Attorney General, as provided in § 2.2-3121 or 2.2-3126, for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

1994, cc. 727, 776, § 2.1-639.4:1; 2001, c. 844; 2013, c. 648; 2014, cc. 792, 804; 2015, cc. 763, 777.

§ 2.2-3104.01. Prohibited conduct; bids or proposals under the Virginia Public Procurement Act, Public-Private Transportation Act, and Public-Private Education Facilities and Infrastructure Act; loans or grants from the Commonwealth's Development Opportunity Fund

A. Neither the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, shall knowingly solicit or accept a contribution, gift, or other item with a value greater than $50 from any bidder, offeror, or private entity, or from an officer or director of such bidder, offeror, or private entity, who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.), or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.)(i) during the period between the submission of the bid and the award of the public contract under the Virginia Public Procurement Act or (ii) following the submission of a proposal under the Public-Private Transportation Act of 1995 or the Public-Private Education Facilities and Infrastructure Act of 2002 until the execution of a comprehensive agreement thereunder.

B. The provisions of this section shall apply only for public contracts, proposals, or comprehensive agreements where the stated or expected value of the contract is $5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding as set forth in § 2.2-4302.1.

C. Any person who knowingly violates this section shall be subject to a civil penalty of $500 or up to two times the amount of the contribution or gift, whichever is greater, and the contribution,

gift, or other item shall be returned to the donor. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund and shall be used exclusively to fund the Council.

2010, c. 732; 2011, c. 624; 2013, c. 583; 2015, cc. 763, 777; 2016, c. 641.

§ 2.2-3104.02. Prohibited conduct for constitutional officers

In addition to the prohibitions contained in § 2.2-3103, no constitutional officer shall, during the one year after the termination of his public service, act in a representative capacity on behalf of any person or group, for compensation, on any matter before the agency of which he was an officer.

The provisions of this section shall not apply to any attorney for the Commonwealth.

Any person subject to the provisions of this section may apply to the attorney for the Commonwealth for the jurisdiction where such person was elected as provided in § 2.2-3126, for an advisory opinion as to the application of the restriction imposed by this section on any post-public employment position or opportunity.

2011, c. 591.

§ 2.2-3104.1. Exclusion of certain awards from scope of chapter

The provisions of this chapter shall not be construed to prohibit or apply to the acceptance by (i) any employee of a local government, or (ii) a teacher or other employee of a local school board of an award or payment in honor of meritorious or exceptional services performed by the teacher or employee and made by an organization exempt from federal income taxation pursuant to the provisions of Section 501(c)(3) of the Internal Revenue Code .

2001, c. 48, § 2.1-639.4:2; 2008, cc. 478, 497.

§ 2.2-3104.2. Ordinance regulating receipt of gifts

The governing body of any county, city, or town may adopt an ordinance setting a monetary limit on the acceptance of any gift by the officers, appointees or employees of the county, city or town and requiring the disclosure by such officers, appointees or employees of the receipt of any gift.

2003, c. 694.

Article 3 - PROHIBITED CONDUCT RELATING TO CONTRACTS

§ 2.2-3105. Application

This article proscribes certain conduct relating to contracts by state and local government officers and employees. The provisions of this article shall be supplemented but not superseded by the provisions on ethics in public contracting in Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title.

1987, Sp. Sess., c. 1, § 2.1-639.5; 2001, c. 844; 2003, c. 694.

§ 2.2-3106. Prohibited contracts by officers and employees of state government and Eastern Virginia Medical School

A. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with the governmental agency of which he is an officer or employee, other than his own contract of employment.

B. No officer or employee of any governmental agency of state government or Eastern Virginia Medical School shall have a personal interest in a contract with any other governmental agency of state government unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over the employment or the employment activities of the member of his immediate family and the employee is not in a position to influence those activities;

2. The personal interest of an officer or employee of a state institution of higher education or the Eastern Virginia Medical School in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are engaged in teaching, research or administrative support positions at the educational institution or the Eastern Virginia Medical School, (ii) the governing board of the educational institution finds that it is in the best interests of the institution or the Eastern Virginia Medical School and the Commonwealth for such dual employment to exist, and (iii) after such finding, the governing board of the educational institution or the Eastern Virginia Medical School ensures that the officer or employee, or the immediate family member, does not have sole authority to supervise, evaluate or make personnel decisions regarding the other;

3. An officer's or employee's personal interest in a contract of employment with any other governmental agency of state government;

4. Contracts for the sale by a governmental agency or the Eastern Virginia Medical School of services or goods at uniform prices available to the general public;

5. An employee's personal interest in a contract between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a publisher or wholesaler of textbooks or other educational materials for students, which accrues to him solely because he has authored or otherwise created such textbooks or materials;

6. An employee's personal interest in a contract with his or her employing public institution of higher education to acquire the collections or scholarly works owned by the employee, including manuscripts, musical scores, poetry, paintings, books or other materials, writings, or papers of an academic, research, or cultural value to the institution, provided the president of the institution approves the acquisition of such collections or scholarly works as being in the best interests of the institution's public mission of service, research, or education;

7. Subject to approval by the board of visitors, an employee's personal interest in a contract between the Eastern Virginia Medical School or a public institution of higher education in Virginia that operates a school of medicine or dentistry and a not-for-profit nonstock corporation that operates a clinical practice within such public institution of higher education or the Eastern Virginia Medical School and of which such employee is a member or employee;

8. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract for research and development or commercialization of intellectual property between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the employee's personal interest has been disclosed to and approved by such public institution of higher education or the Eastern Virginia Medical School prior to the time at which the contract is entered into; (ii) the employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the institution has established a formal policy regarding such contracts, approved by the State Council of Higher Education or, in the case of the Eastern Virginia Medical School, a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its board of visitors; and (iv) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth; or

9. Subject to approval by the relevant board of visitors, an employee's personal interest in a contract between a public institution of higher education in Virginia or the Eastern Virginia Medical School and a business in which the employee has a personal interest, if (i) the personal interest has been disclosed to the institution or the Eastern Virginia Medical School prior to the time the contract is entered into; (ii) the employee files a disclosure statement pursuant to § 2.2-3117 and thereafter annually on or before January 15; (iii) the employee does not participate in the institution's or the Eastern Virginia Medical School's decision to contract; (iv) the president of the institution or the Eastern Virginia Medical School finds and certifies in writing that the contract is for

goods and services needed for quality patient care, including related medical education or research, by the institution's medical center or the Eastern Virginia Medical School, its affiliated teaching hospitals and other organizations necessary for the fulfillment of its mission, including the acquisition of drugs, therapies and medical technologies; and (v) no later than December 31 of each year, the institution or the Eastern Virginia Medical School files an annual report with the Secretary of the Commonwealth disclosing each open contract entered subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, and any other information requested by the Secretary of the Commonwealth.

D. Notwithstanding the provisions of subdivisions C 8 and C 9, if the research and development or commercialization of intellectual property or the employee's personal interest in a contract with a business is subject to policies and regulations governing conflicts of interest promulgated by any agency of the United States government, including the adoption of policies requiring the disclosure and management of such conflicts of interests, the policies established by the Eastern Virginia Medical School pursuant to such federal requirements shall constitute compliance with subdivisions C 8 and C 9, upon notification by the Eastern Virginia Medical School to the Secretary of the Commonwealth by January 31 of each year of evidence of their compliance with such federal policies and regulations.

E. The board of visitors may delegate the authority granted under subdivision C 8 to the president of the institution. If the board elects to delegate such authority, the board shall include this delegation of authority in the formal policy required by clause (iii) of subdivision C 8. In those instances where the board has delegated such authority, on or before December 1 of each year, the president of the relevant institution shall file a report with the relevant board of visitors disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the institution's or the Eastern Virginia Medical School's employee responsible for administering each contract, the details of the institution's or the Eastern Virginia Medical School's commitment or investment of resources or finances for each contract, the details of how revenues are to be dispersed, and any other information requested by the board of visitors.

1987, Sp. Sess., c. 1, § 2.1-639.6; 1989, c. 74; 1991, c. 470; 1993, c. 876; 1995, c. 403; 1998, c. 838; 2001, c. 844; 2002, cc. 87, 478; 2003, c. 646; 2006, c. 839; 2013, c. 583; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-3107. Prohibited contracts by members of county boards of supervisors, city councils and town councils

A. No person elected or appointed as a member of the governing body of a county, city or town shall have a personal interest in (i) any contract with his governing body, or (ii) any contract with any governmental agency that is a component part of his local government and which is subject to the ultimate control of the governing body of which he is a member, or (iii) any contract other than a contract of employment with any other governmental agency if such person's governing body appoints a majority of the members of the governing body of the second governmental agency.

B. The provisions of this section shall not apply to:

1. A member's personal interest in a contract of employment provided (i) the officer or employee was employed by the governmental agency prior to July 1, 1983, in accordance with the provisions of the former Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) of Title 2.1 as it existed on June 30, 1983, or (ii) the employment first began prior to the member becoming a member of the governing body;

2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or

3. A contract awarded to a member of a governing body as a result of competitive sealed bidding where the governing body has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the governing body. However, the member shall have no involvement in the preparation of the specifications for such contract, and the remaining members of the governing body, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

1987, Sp. Sess., c. 1, § 2.1-639.7; 2001, c. 844.

§ 2.2-3108. Prohibited contracts by members of school boards

A. No person elected or appointed as a member of a local school board shall have a personal interest in (i) any contract with his school board or (ii) any contract with any governmental agency that is subject to the ultimate control of the school board of which he is a member.

B. The provisions of this section shall not apply to:

1. A member's personal interest in a contract of employment provided the employment first began prior to the member becoming a member of the school board;

2. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the public; or

3. A contract awarded to a member of a school board as a result of competitive sealed bidding where the school board has established a need for the same or substantially similar goods through purchases prior to the election or appointment of the member to serve on the school board. However, the member shall have no involvement in the preparation of the specifications for such

contract, and the remaining members of the school board, by written resolution, shall state that it is in the public interest for the member to bid on such contract.

1996, c. 548, § 2.1-639.7:1; 2001, c. 844.

§ 2.2-3109. Prohibited contracts by other officers and employees of local governmental agencies

A. No other officer or employee of any governmental agency of local government, including a hospital authority as defined in § 2.2-3109.1, shall have a personal interest in a contract with the agency of which he is an officer or employee other than his own contract of employment.

B. No officer or employee of any governmental agency of local government, including a hospital authority as defined in § 2.2-3109.1, shall have a personal interest in a contract with any other governmental agency that is a component of the government of his county, city or town unless such contract is (i) awarded as a result of competitive sealed bidding or competitive negotiation as set forth in § 2.2-4302.1 or 2.2-4302.2 or is awarded as a result of a procedure embodying competitive principles as authorized by subdivision A 10 or 11 of § 2.2-4343 or (ii) is awarded after a finding, in writing, by the administrative head of the governmental agency that competitive bidding or negotiation is contrary to the best interest of the public.

C. The provisions of this section shall not apply to:

1. An employee's personal interest in additional contracts for goods or services, or contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided the employee does not exercise any control over (i) the employment or the employment activities of the member of his immediate family and (ii) the employee is not in a position to influence those activities or the award of the contract for goods or services;

2. An officer's or employee's personal interest in a contract of employment with any other governmental agency that is a component part of the government of his county, city or town;

3. Contracts for the sale by a governmental agency of services or goods at uniform prices available to the general public;

4. Members of local governing bodies who are subject to § 2.2-3107;

5. Members of local school boards who are subject to § 2.2-3108; or

6. Any ownership or financial interest of members of the governing body, administrators, and other personnel serving in a public charter school in renovating, lending, granting, or leasing public charter school facilities, as the case may be, provided such interest has been disclosed in the public charter school application as required by § 22.1-212.8.

1987, Sp. Sess., c. 1, § 2.1-639.8; 1996, c. 548; 2001, c. 844; 2004, c. 530; 2009, c. 862; 2013, c. 583; 2015, c. 699.

§ 2.2-3109.1. Prohibited contracts; additional exclusions for contracts by officers and employees of hospital authorities

A. As used in this section, "hospital authority" means a hospital authority established pursuant to Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2 or an Act of Assembly.

B. The provisions of § 2.2-3109 shall not apply to:

1. The personal interest of an officer or employee of a hospital authority in additional contracts of employment with his own governmental agency that accrue to him because of a member of his immediate family, provided (i) the officer or employee and the immediate family member are licensed members of the medical profession or hold administrative support positions at the hospital authority, (ii) the governing board of the hospital authority finds that it is in the best interests of the hospital authority and the county, city, or town for such dual employment to exist, and (iii) after such finding, the governing board of the hospital authority ensures that neither the officer or employee, nor the immediate family member, has sole authority to supervise, evaluate, or make personnel decisions regarding the other;

2. Subject to approval by the governing board of the hospital authority, an officer or employee's personal interest in a contract between his hospital authority and a professional entity that operates a clinical practice at any medical facilities of such other hospital authority and of which such officer or employee is a member or employee;

3. Subject to approval by the relevant governing body, an officer or employee's personal interest in a contract for research and development or commercialization of intellectual property between the hospital authority and a business in which the employee has a personal interest, provided (i) the officer or employee's personal interest has been disclosed to and approved by the hospital authority prior to the time at which the contract is entered into; (ii) the officer or employee promptly files a disclosure statement pursuant to § 2.2-3117 and thereafter files such statement annually on or before January 15; (iii) the local hospital authority has established a formal policy regarding such contracts in conformity with any applicable federal regulations that has been approved by its governing body; and (iv) no later than December 31 of each year, the local hospital authority files an annual report with the Virginia Conflict of Interest and Ethics Advisory Council disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of such hospital authority's commitment or investment of resources or finances for each contract, and any other information requested by the Virginia Conflict of Interest and Ethics Advisory Council; or

4. Subject to approval by the relevant governing body, an officer or employee's personal interest in a contract between the hospital authority and a business in which the officer or employee has a personal interest, provided (i) the personal interest has been disclosed to the hospital authority prior to the time the contract is entered into; (ii) the officer or employee files a disclosure statement pursuant to § 2.2-3117 and thereafter annually on or before January 15; (iii) the officer or

employee does not participate in the hospital authority's decision to contract; (iv) the president or chief executive officer of the hospital authority finds and certifies in writing that the contract is for goods and services needed for quality patient care, including related medical education or research, by any of the hospital authority's medical facilities or any of its affiliated organizations, or is otherwise necessary for the fulfillment of its mission, including but not limited to the acquisition of drugs, therapies, and medical technologies; and (v) no later than December 31 of each year, the hospital authority files an annual report with the Virginia Conflict of Interest and Ethics Advisory Council disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of the hospital authority's commitment or investment of resources or finances for each contract, and any other information requested by the Virginia Conflict of Interest and Ethics Advisory Council.

C. Notwithstanding the provisions of subdivisions B 3 and B 4, if the research and development or commercialization of intellectual property or the officer or employee's personal interest in a contract with a business is subject to policies and regulations governing conflicts of interest promulgated by any agency of the United States government, including the adoption of policies requiring the disclosure and management of such conflicts of interest, the policies established by the hospital authority pursuant to such federal requirements shall constitute compliance with subdivisions B 3 and B 4, upon notification by the hospital authority to the Virginia Conflict of Interest and Ethics Advisory Council by January 31 of each year of evidence of its compliance with such federal policies and regulations.

D. The governing body may delegate the authority granted under subdivision B 2 to the president or chief executive officer of hospital authority. If the board elects to delegate such authority, the board shall include this delegation of authority in the formal policy required by clause (iii) of subdivision B 3. In those instances where the board has delegated such authority, on or before December 1 of each year, the president or chief executive officer of the hospital authority shall file a report with the relevant governing body disclosing each open contract entered into subject to this provision, the names of the parties to each contract, the date each contract was executed and its term, the subject of each contractual arrangement, the nature of the conflict of interest, the hospital authority's employee responsible for administering each contract, the details of the hospital authority's commitment or investment of resources or finances for each contract, the details of how revenues are to be dispersed, and any other information requested by the governing body.

2015, c. 699; 2016, cc. 773, 774.

§ 2.2-3110. Further exceptions

A. The provisions of Article 3 (§ 2.2-3106 et seq.) shall not apply to:

1. The sale, lease or exchange of real property between an officer or employee and a governmental agency, provided the officer or employee does not participate in any way as such officer or employee in such sale, lease or exchange, and this fact is set forth as a matter of public record by the governing body of the governmental agency or by the administrative head thereof;

2. The publication of official notices;

3. Contracts between the government or school board of a town or city with a population of less than 10,000 and an officer or employee of that town or city government or school board when the total of such contracts between the town or city government or school board and the officer or employee of that town or city government or school board or a business controlled by him does not exceed $10,000 per year or such amount exceeds $10,000 and is less than $25,000 but results from contracts arising from awards made on a sealed bid basis, and such officer or employee has made disclosure as provided for in § 2.2-3115;

4. An officer or employee whose sole personal interest in a contract with the governmental agency is by reason of income from the contracting firm or governmental agency in excess of $10,000 per year, provided the officer or employee or a member of his immediate family does not participate and has no authority to participate in the procurement or letting of such contract on behalf of the contracting firm and the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of his governmental agency or he disqualifies himself as a matter of public record and does not participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

5. When the governmental agency is a public institution of higher education, an officer or employee whose personal interest in a contract with the institution is by reason of an ownership in the contracting firm in excess of three percent of the contracting firm's equity or such ownership interest and income from the contracting firm is in excess of $10,000 per year, provided that (i) the officer or employee's ownership interest, or ownership and income interest, and that of any immediate family member in the contracting firm is disclosed in writing to the president of the institution, which writing certifies that the officer or employee has not and will not participate in the contract negotiations on behalf of the contracting firm or the institution, (ii) the president of the institution makes a written finding as a matter of public record that the contract is in the best interests of the institution, (iii) the officer or employee either does not have authority to participate in the procurement or letting of the contract on behalf of the institution or disqualifies himself as a matter of public record, and (iv) does not participate on behalf of the institution in negotiating the contract or approving the contract;

6. Except when the governmental agency is the Virginia Retirement System, contracts between an officer's or employee's governmental agency and a public service corporation, financial institution, or company furnishing public utilities in which the officer or employee has a personal interest, provided the officer or employee disqualifies himself as a matter of public record and does not

participate on behalf of his governmental agency in negotiating the contract or in approving the contract;

7. Contracts for the purchase of goods or services when the contract does not exceed $500;

8. Grants or other payment under any program wherein uniform rates for, or the amounts paid to, all qualified applicants are established solely by the administering governmental agency;

9. An officer or employee whose sole personal interest in a contract with his own governmental agency is by reason of his marriage to his spouse who is employed by the same agency, if the spouse was employed by such agency for five or more years prior to marrying such officer or employee; or

10. Contracts entered into by an officer or employee of a soil and water conservation district created pursuant to Article 3 (§ 10.1-506 et seq.) of Chapter 5 of Title 10.1 to participate in the Virginia Agricultural Best Management Practices Cost-Share Program (the Program) established in accordance with § 10.1-546.1. This subdivision shall not apply to subcontracts or other agreements entered into by an officer or employee of a soil and water conservation district to provide services for implementation of a cost-share contract established under the Program.

B. Neither the provisions of this chapter nor, unless expressly provided otherwise, any amendments thereto shall apply to those employment contracts or renewals thereof or to any other contracts entered into prior to August 1, 1987, which were in compliance with either the former Virginia Conflict of Interests Act, Chapter 22 (§ 2.1-347 et seq.) or the former Comprehensive Conflict of Interests Act, Chapter 40 (§ 2.1-599 et seq.) of Title 2.1 at the time of their formation and thereafter. Those contracts shall continue to be governed by the provisions of the appropriate prior Act. Notwithstanding the provisions of subdivision (f)(4) of § 2.1-348 of Title 2.1 in effect prior to July 1, 1983, the employment by the same governmental agency of an officer or employee and spouse or any other relative residing in the same household shall not be deemed to create a material financial interest except when one of such persons is employed in a direct supervisory or administrative position, or both, with respect to such spouse or other relative residing in his household and the annual salary of such subordinate is $35,000 or more.

1987, Sp. Sess., c. 1, § 2.1-639.9; 1990, c. 51; 1993, c. 303; 1994, cc. 450, 713; 1997, c. 641; 2001, c. 844; 2006, c. 839; 2010, cc. 301, 304; 2016, cc. 351, 531.

Article 4 - PROHIBITED CONDUCT RELATING TO TRANSACTIONS

§ 2.2-3111. Application

This article proscribes certain conduct by state and local government officers and employees having a personal interest in a transaction.

1987, Sp. Sess., c. 1, § 2.1-639.10; 2001, c. 844.

§ 2.2-3112. Prohibited conduct concerning personal interest in a transaction; exceptions

A. Each officer and employee of any state or local governmental or advisory agency who has a personal interest in a transaction:

1. Shall disqualify himself from participating in the transaction if (i) the transaction has application solely to property or a business or governmental agency in which he has a personal interest or a business that has a parent-subsidiary or affiliated business entity relationship with the business in which he has a personal interest or (ii) he is unable to participate pursuant to subdivision 2, 3 or 4. Any disqualification under the provisions of this subdivision shall be recorded in the public records of the officer's or employee's governmental or advisory agency. The officer or employee shall disclose his personal interest as required by subsection E of § 2.2-3114 or subsection F of § 2.2-3115 and shall not vote or in any manner act on behalf of his agency in the transaction. The officer or employee shall be prohibited from (i) attending any portion of a closed meeting authorized by the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) when the matter in which he has a personal interest is discussed and (ii) discussing the matter in which he has a personal interest with other governmental officers or employees at any time;

2. May participate in the transaction if he is a member of a business, profession, occupation, or group of three or more persons the members of which are affected by the transaction, and he complies with the declaration requirements of subsection F of § 2.2-3114 or subsection H of § 2.2-3115;

3. May participate in the transaction when a party to the transaction is a client of his firm if he does not personally represent or provide services to such client and he complies with the declaration requirements of subsection G of § 2.2-3114 or subsection I of § 2.2-3115; or

4. May participate in the transaction if it affects the public generally, even though his personal interest, as a member of the public, may also be affected by that transaction.

B. Disqualification under the provisions of this section shall not prevent any employee having a personal interest in a transaction in which his agency is involved from representing himself or a member of his immediate family in such transaction provided he does not receive compensation for such representation and provided he complies with the disqualification and relevant disclosure requirements of this chapter.

C. Notwithstanding any other provision of law, if disqualifications of officers or employees in accordance with this section leave less than the number required by law to act, the remaining member or members shall constitute a quorum for the conduct of business and have authority to act for the agency by majority vote, unless a unanimous vote of all members is required by law, in which case authority to act shall require a unanimous vote of remaining members. Notwithstanding any provisions of this chapter to the contrary, members of a local governing body whose sole interest in any proposed sale, contract of sale, exchange, lease or conveyance is by virtue of their employment by a business involved in a proposed sale, contract of sale, exchange, lease or conveyance, and where such member's or members' vote is essential to a constitutional

majority required pursuant to Article VII, Section 9 of the Constitution of Virginia and § 15.2-2100, such member or members of the local governing body may vote and participate in the deliberations of the governing body concerning whether to approve, enter into or execute such sale, contract of sale, exchange, lease or conveyance. Official action taken under circumstances that violate this section may be rescinded by the agency on such terms as the interests of the agency and innocent third parties require.

D. The provisions of subsection A shall not prevent an officer or employee from participating in a transaction merely because such officer or employee is a party in a legal proceeding of a civil nature concerning such transaction.

E. The provisions of subsection A shall not prevent an employee from participating in a transaction regarding textbooks or other educational material for students at state institutions of higher education, when those textbooks or materials have been authored or otherwise created by the employee.

1987, Sp. Sess., c. 1, § 2.1-639.11; 2001, c. 844; 2003, c. 694; 2007, c. 613; 2012, c. 429.

Article 5 - DISCLOSURE STATEMENTS REQUIRED TO BE FILED

§ 2.2-3113. Application

This article requires disclosure of certain personal and financial interests by state and local government officers and employees.

1987, Sp. Sess., c. 1, § 2.1-639.12; 2001, c. 844.

§ 2.2-3114. Disclosure by state officers and employees

A. The Governor, Lieutenant Governor, Attorney General, Justices of the Supreme Court, judges of the Court of Appeals, judges of any circuit court, judges and substitute judges of any district court, members of the State Corporation Commission, members of the Virginia Workers' Compensation Commission, members of the Commonwealth Transportation Board, members of the Board of Trustees of the Virginia Retirement System, members of the Virginia Alcoholic Beverage Control Board, and members of the Virginia Lottery Board and other persons occupying such offices or positions of trust or employment in state government, including members of the governing bodies of authorities, as may be designated by the Governor, or officers or employees of the legislative branch, as may be designated by the Joint Rules Committee of the General Assembly, shall file with the Council, as a condition to assuming office or employment, a disclosure statement of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before January 15. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday.

B. Nonsalaried citizen members of all policy and supervisory boards, commissions and councils in the executive branch of state government, other than the Commonwealth Transportation Board,

members of the Board of Trustees of the Virginia Retirement System, and the Virginia Lottery Board, shall file with the Council, as a condition to assuming office, a disclosure form of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such form annually on or before January 15. When the filing deadline falls on a Saturday, Sunday, or legal holiday, the disclosure statement shall be filed on the next day that is not a Saturday, Sunday, or legal holiday. Nonsalaried citizen members of other boards, commissions and councils, including advisory boards and authorities, may be required to file a disclosure form if so designated by the Governor, in which case the form shall be that prescribed by the Council pursuant to § 2.2-3118.

C. The disclosure forms required by subsections A and B shall be made available by the Council at least 30 days prior to the filing deadline. Disclosure forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. All forms shall be maintained as public records for five years in the office of the Council. Such forms shall be made public no later than six weeks after filing.

D. Candidates for the offices of Governor, Lieutenant Governor or Attorney General shall file a disclosure statement of their personal interests as required by § 24.2-502.

E. Any officer or employee of state government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subdivision A 1 of § 2.2-3112, or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall also be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental agency or advisory agency or, if the agency has a clerk, in the clerk's office.

F. An officer or employee of state government who is required to declare his interest pursuant to subdivision A 2 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

G. An officer or employee of state government who is required to declare his interest pursuant to subdivision A 3 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

H. Notwithstanding any other provision of law, chairs of departments at a public institution of higher education in the Commonwealth shall not be required to file the disclosure form prescribed by the Council pursuant to § 2.2-3117 or 2.2-3118.

1987, Sp. Sess., c. 1, § 2.1-639.13; 1988, cc. 767, 849; 1992, c. 710; 1993, c. 303; 1997, c. 641; 2001, cc. 217, 844; 2003, c. 694; 2005, c. 169; 2006, c. 779; 2014, cc. 225, 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-3114.1. Filings of statements of economic interests by General Assembly members

The filing of a current statement of economic interests by a General Assembly member, member-elect, or candidate for the General Assembly pursuant to §§ 30-110 and 30-111 of the General Assembly Conflicts of Interests Act (§ 30-100 et seq.) shall suffice for the purposes of this chapter. The Secretary of the Commonwealth may obtain from the Council a copy of the statement of a General Assembly member who is appointed to a position for which a statement is required pursuant to § 2.2-3114. No General Assembly member, member-elect, or candidate shall be required to file a separate statement of economic interests for the purposes of § 2.2-3114.

2002, c. 36; 2015, cc. 763, 777.

§ 2.2-3114.2. Report of gifts by certain officers and employees of state government

The Governor, Lieutenant Governor, Attorney General, and each member of the Governor's Cabinet shall file, on or before May 1, a report of gifts accepted or received by him or a member of his immediate family during the period beginning on January 1 complete through adjournment sine die of the regular session of the General Assembly. The gift report shall be on a form prescribed by the Council and shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. For purposes of this section, "adjournment sine die" means adjournment on the last legislative day of the regular session and does not include the ensuing reconvened session. Any gifts reported pursuant to this section shall not be listed on the annual disclosure form prescribed by the Council pursuant to § 2.2-3117.

2016, cc. 773, 774.

§ 2.2-3115. Disclosure by local government officers and employees

A. The members of every governing body and school board of each county and city and of towns with populations in excess of 3,500 shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before January 15.

The members of the governing body of any authority established in any county or city, or part or combination thereof, and having the power to issue bonds or expend funds in excess of $10,000 in any fiscal year, shall file, as a condition to assuming office, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such a statement annually on or before January 15, unless the governing body of the jurisdiction that appoints the members requires that the members file the form set forth in § 2.2-3117.

Persons occupying such positions of trust appointed by governing bodies and persons occupying such positions of employment with governing bodies as may be designated to file by ordinance of the governing body shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before January 15.

Persons occupying such positions of trust appointed by school boards and persons occupying such positions of employment with school boards as may be designated to file by an adopted policy of the school board shall file, as a condition to assuming office or employment, a disclosure statement of their personal interests and other information as is required on the form prescribed by the Council pursuant to § 2.2-3117 and thereafter shall file such a statement annually on or before January 15.

B. Nonsalaried citizen members of local boards, commissions and councils as may be designated by the governing body shall file, as a condition to assuming office, a disclosure form of their personal interests and such other information as is required on the form prescribed by the Council pursuant to § 2.2-3118 and thereafter shall file such form annually on or before January 15.

C. No person shall be mandated to file any disclosure not otherwise required by this article.

D. The disclosure forms required by subsections A and B shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council at least 30 days prior to the filing deadline, and the clerks of the governing body and school board shall distribute the forms to designated individuals at least 20 days prior to the filing deadline. Forms shall be filed and maintained as public records for five years in the office of the clerk of the respective governing body or school board. Forms filed by members of governing bodies of authorities shall be filed and maintained as public

records for five years in the office of the clerk of the governing body of the county or city. Such forms shall be made public no later than six weeks after filing.

E. Candidates for membership in the governing body or school board of any county, city or town with a population of more than 3,500 persons shall file a disclosure statement of their personal interests as required by § 24.2-502.

F. Any officer or employee of local government who has a personal interest in any transaction before the governmental or advisory agency of which he is an officer or employee and who is disqualified from participating in that transaction pursuant to subdivision A 1 of § 2.2-3112 or otherwise elects to disqualify himself, shall forthwith make disclosure of the existence of his interest, including the full name and address of the business and the address or parcel number for the real estate if the interest involves a business or real estate, and his disclosure shall be reflected in the public records of the agency for five years in the office of the administrative head of the officer's or employee's governmental or advisory agency.

G. In addition to any disclosure required by subsections A and B, in each county and city and in towns with populations in excess of 3,500, members of planning commissions, boards of zoning appeals, real estate assessors, and all county, city and town managers or executive officers shall make annual disclosures of all their interests in real estate located in the county, city or town in which they are elected, appointed, or employed. Such disclosure shall include any business in which such persons own an interest, or from which income is received, if the primary purpose of the business is to own, develop or derive compensation through the sale, exchange or development of real estate in the county, city or town. Such disclosure shall be filed as a condition to assuming office or employment, and thereafter shall be filed annually with the clerk of the governing body of such county, city, or town on or before January 15. Such disclosures shall be filed and maintained as public records for five years. Such forms shall be made public no later than six weeks after filing. Forms for the filing of such reports shall be made available by the Virginia Conflict of Interest and Ethics Advisory Council to the clerk of each governing body.

H. An officer or employee of local government who is required to declare his interest pursuant to subdivision A 2 of § 2.2-3112 shall declare his interest by stating (i) the transaction involved, (ii) the nature of the officer's or employee's personal interest affected by the transaction, (iii) that he is a member of a business, profession, occupation, or group the members of which are affected by the transaction, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day. The officer or employee shall also

orally disclose the existence of the interest during each meeting of the governmental or advisory agency at which the transaction is discussed and such disclosure shall be recorded in the minutes of the meeting.

I. An officer or employee of local government who is required to declare his interest pursuant to subdivision A 3 of § 2.2-3112, shall declare his interest by stating (i) the transaction involved, (ii) that a party to the transaction is a client of his firm, (iii) that he does not personally represent or provide services to the client, and (iv) that he is able to participate in the transaction fairly, objectively, and in the public interest. The officer or employee shall either make his declaration orally to be recorded in written minutes for his agency or file a signed written declaration with the clerk or administrative head of his governmental or advisory agency, as appropriate, who shall, in either case, retain and make available for public inspection such declaration for a period of five years from the date of recording or receipt. If reasonable time is not available to comply with the provisions of this subsection prior to participation in the transaction, the officer or employee shall prepare and file the required declaration by the end of the next business day.

1987, Sp. Sess., c. 1, § 2.1-639.14; 1988, c. 849; 1995, c. 495; 1996, c. 526; 2000, c. 317; 2001, cc. 217, 844; 2003, c. 694; 2012, c. 429; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-3116. Disclosure by certain constitutional officers

For the purposes of this chapter, holders of the constitutional offices of treasurer, sheriff, attorney for the Commonwealth, clerk of the circuit court, and commissioner of the revenue of each county and city shall be required to file with the Council, as a condition to assuming office, the Statement of Economic Interests prescribed by the Council pursuant to § 2.2-3117. These officers shall file statements annually on or before January 15. Candidates shall file statements as required by § 24.2-502. Statements shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. These officers shall be subject to the prohibition on certain gifts set forth in subsection B of § 2.2-3103.1.

1988, c. 469, § 2.1-639.14:1; 2001, c. 844; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-3117. (Effective until January 1, 2017) Disclosure form

The disclosure form to be used for filings required by subsections A and D of § 2.2-3114 and subsections A and E of § 2.2-3115 shall be substantially similar to the following. Except as otherwise provided in § 2.2-3115, all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. Any person who knowingly and intentionally makes a false statement of a material fact on the Statement of Economic Interests is guilty of a Class 5 felony.

STATEMENT OF ECONOMIC INTERESTS.

Name_____

Office or position held or sought_____

Address_____

Names of members of immediate family_____

DEFINITIONS AND EXPLANATORY MATERIAL.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Close financial association" means an association in which the person filing shares significant financial involvement with an individual and the filer would reasonably be expected to be aware of the individual's business activities and would have access to the necessary records either directly or through the individual. "Close financial association" does not mean an association based on (i) the receipt of retirement benefits or deferred compensation from a business by which the person filing this statement is no longer employed, or (ii) the receipt of compensation for work performed by the person filing as an independent contractor of a business that represents an entity before any state governmental agency when the person filing has had no communications with the state governmental agency.

"Contingent liability" means a liability that is not presently fixed or determined, but may become fixed or determined in the future with the occurrence of some certain event.

"Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. It includes services as well as gifts of transportation, lodgings and meals, whether provided in-kind, by purchase of a ticket, payment in advance or reimbursement after the expense has been incurred. "Gift" does not include (i) any offer of a ticket, coupon, or other admission or pass unless the ticket, coupon, admission, or pass is used; (ii) honorary degrees; (iii) any athletic, merit, or need-based scholarship or any other financial aid awarded by a public or private school, institution of higher education, or other educational program pursuant to such school, institution, or program's financial aid standards and procedures applicable to the general public; (iv) a campaign contribution properly received and reported pursuant to Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2; (v) any gift related to the private profession or occupation of an officer or employee or of a member of his immediate family; (vi) food or beverages consumed while attending an event at which the filer is performing official duties related to his public service; (vii) food and beverages received at or registration or attendance fees waived for any event at which the filer is a featured speaker, presenter, or lecturer; (viii) unsolicited awards of appreciation or recognition in the form of a plaque, trophy, wall memento, or similar item that is given in recognition of public, civic, charitable, or professional service; (ix) a devise or inheritance; (x) travel disclosed pursuant to the Campaign Finance Disclosure Act (§ 24.2-945 et seq.); (xi) travel paid for or provided by the government of the United States, any of its territories, or any state or any political subdivision of such state; (xii) travel provided to facilitate attendance by a legislator at a regular or special session of the General Assembly, a meeting of a legislative committee or

commission, or a national conference where attendance is approved by the House or Senate Committee on Rules; (xiii) travel related to an official meeting of the Commonwealth, its political subdivisions, or any board, commission, authority, or other entity, or any charitable organization established pursuant to § 501(c)(3) of the Internal Revenue Code affiliated with such entity, to which such person has been appointed or elected or is a member by virtue of his office or employment; or (xiv) gifts from relatives or personal friends. "Relative" means the donee's spouse, child, uncle, aunt, niece, nephew, or first cousin; a person to whom the donee is engaged to be married; the donee's or his spouse's parent, grandparent, grandchild, brother, sister, step-parent, step-grandparent, step-grandchild, step-brother, or step-sister; or the donee's brother's or sister's spouse. "Personal friend" does not include any person that the filer knows or has reason to know is (a) a lobbyist registered pursuant to Article 3 (§ 2.2-418 et seq.) of Chapter 4 of Title 2.2; (b) a lobbyist's principal as defined in § 2.2-419; (c) for an officer or employee of a local governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the local agency of which he is an officer or an employee; or (d) for an officer or employee of a state governmental or advisory agency, a person, organization, or business who is a party to or is seeking to become a party to a contract with the Commonwealth. "Person, organization, or business" includes individuals who are officers, directors, or owners of or who have a controlling ownership interest in such organization or business.

"Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the officer or employee and who is a dependent of the officer or employee.

TRUST. If you or your immediate family, separately or together, are the only beneficiaries of a trust, treat the trust's assets as if you own them directly. If you or your immediate family has a proportional interest in a trust, treat that proportion of the trust's assets as if you own them directly. For example, if you and your immediate family have a one-third interest in a trust, complete your Statement as if you own one-third of each of the trust's assets. If you or a member of your immediate family created a trust and can revoke it without the beneficiaries' consent, treat its assets as if you own them directly.

REPORT TO THE BEST OF INFORMATION AND BELIEF. Information required on this Statement must be provided on the basis of the best knowledge, information, and belief of the individual filing the Statement as of the date of this report unless otherwise stated.

COMPLETE ITEMS 1 THROUGH 10. REFER TO SCHEDULES ONLY IF DIRECTED.

You may attach additional explanatory information.
1. Offices and Directorships.
Are you or a member of your immediate family a paid officer or paid director of a business?
EITHER check NO / / OR check YES / / and complete Schedule A.
2. Personal Liabilities.
Do you or a member of your immediate family owe more than $5,000 to any one creditor including contingent liabilities? (Exclude debts to any government and loans secured by recorded liens

on property at least equal in value to the loan.)
EITHER check NO / / OR check YES / / and complete Schedule B.
3. Securities.
Do you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of $5,000 invested in one business? Account for mutual funds, limited partnerships and trusts.
EITHER check NO / / OR check YES / / and complete Schedule C.
4. Payments for Talks, Meetings, and Publications.
During the past six months did you receive in your capacity as an officer or employee of your agency lodging, transportation, money, or anything else of value with a combined value exceeding $100 (i) for a single talk, meeting, or published work or (ii) for a meeting, conference, or event where your attendance at the meeting, conference, or event was designed to (a) educate you on issues relevant to your duties as an officer or employee of your agency or (b) enhance your knowledge and skills relative to your duties as an officer or employee of your agency?
EITHER check NO / / OR check YES / / and complete Schedule D.
5. Gifts.
During the past six months did a business, government, or individual other than a relative or personal friend (i) furnish you or a member of your immediate family with any gift or entertainment at a single event and the value received exceeded $50 or (ii) furnish you or a member of your immediate family with gifts or entertainment in any combination and the total value received exceeded $50, and for which you or the member of your immediate family neither paid nor rendered services in exchange? Account for entertainment events only if the average value per person attending the event exceeded $50. Account for all business entertainment (except if related to the private profession or occupation of you or the member of your immediate family who received such business entertainment) even if unrelated to your official duties.
EITHER check NO / / OR check YES / / and complete Schedule E.
6. Salary and Wages.
List each employer that pays you or a member of your immediate family salary or wages in excess of $5,000 annually. (Exclude state or local government or advisory agencies.)
If no reportable salary or wages, check here / /.

_____

_____

_____

7. Business Interests.
Do you or a member of your immediate family, separately or together, operate your own business, or own or control an interest in excess of $5,000 in a business?
EITHER check NO / / OR check YES / / and complete Schedule F.

8. Payments for Representation and Other Services.

8A. Did you represent, excluding activity defined as lobbying in § 2.2-419, any businesses before any state governmental agencies, excluding courts or judges, for which you received total compensation during the past six months in excess of $1,000, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers? (Officers and employees of local governmental and advisory agencies do NOT need to answer this question or complete Schedule G-1.)
EITHER check NO / / OR check YES / / and complete Schedule G-1.
8B. Subject to the same exceptions as in 8A, did persons with whom you have a close financial association (partners, associates or others) represent, excluding activity defined as lobbying in § 2.2-419, any businesses before any state governmental agency for which total compensation was received during the past six months in excess of $1,000? (Officers and employees of local governmental and advisory agencies do NOT need to answer this question or complete Schedule G-2.)
EITHER check NO / / OR check YES / / and complete Schedule G-2.
8C. Did you or persons with whom you have a close financial association furnish services to businesses operating in Virginia pursuant to an agreement between you and such businesses, or between persons with whom you have a close financial association and such businesses for which total compensation in excess of $1,000 was received during the past six months? Services reported under this provision shall not include services involving the representation of businesses that are reported under item 8A or 8B.
EITHER check NO / / OR check YES / / and complete Schedule G-3.

9. Real Estate.

9A. State Officers and Employees.
Do you or a member of your immediate family hold an interest, including a partnership interest, valued at more than $5,000 in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.
EITHER check NO / / OR check YES / / and complete Schedule H-1.
9B. Local Officers and Employees.
Do you or a member of your immediate family hold an interest, including a partnership interest, or option, easement, or land contract, valued at more than $5,000 in real property (other than your principal residence) for which you have not already listed the full address on Schedule F? Account for real estate held in trust.
EITHER check NO / / OR check YES / / and complete Schedule H-2.
10. Real Estate Contracts with Governmental Agencies.
Do you or a member of your immediate family hold an interest valued at more than $5,000 in real estate, including a corporate, partnership, or trust interest, option, easement, or land contract, which real estate is the subject of a contract, whether pending or completed within the past six months, with a governmental agency? If the real estate contract provides for the leasing of the property to a governmental agency, do you or a member of your immediate family hold an interest in the real estate valued at more than $1,000? Account for all such contracts whether or not your

interest is reported in Schedule F, H-1, or H-2. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership interest in a business unless the ownership interest exceeds three percent of the total equity of the business.
EITHER check NO / / OR check YES / / and complete Schedule I.

Statements of Economic Interests are open for public inspection.

AFFIRMATION BY ALL FILERS.

I swear or affirm that the foregoing information is full, true and correct to the best of my knowledge.

Signature_____

(Return only if needed to complete Statement.)

SCHEDULES to STATEMENT OF ECONOMIC INTERESTS.

NAME_____

SCHEDULE A -- OFFICES AND DIRECTORSHIPS.
Identify each business of which you or a member of your immediate family is a paid officer or paid director.

Name of Business	Address of Business	Position Held and by Whom
_____	_____	_____
__	__	__
_____	_____	_____
__	__	__
_____	_____	_____
__	__	__
_____	_____	_____
__	__	__

RETURN TO ITEM 2

SCHEDULE B -- PERSONAL LIABILITIES.
Report personal liability by checking each category. Report only debts in excess of $5,000. Do not report debts to any government. Do not report loans secured by recorded liens on property at least equal in value to the loan.

Report contingent liabilities below and indicate which debts are contingent.

1. My personal debts are as follows:

	Check one	
Check appropriate categories	$5,001 to $50,000	More than $50,000
Banks	_____	_____

	___	___
Savings institutions	_____	_____
	___	___
Other loan or finance companies	_____	_____
	___	___
Insurance companies	_____	_____
	___	___
Stock, commodity or other brokerage companies	_____	_____
	___	___
Other businesses: (State principal business activity for each creditor and its name.)		
_____	_____	_____
_____	___	___
_____	_____	_____
_____	___	___
Individual creditors: (State principal business or occupation of each creditor and its name.)		
_____	_____	_____
_____	___	___
_____	_____	_____
_____	___	___

2. The personal debts of the members of my immediate family are as follows:

	Check one	
Check appropriate categories	$5,001 to $50,000	More than $50,000
Banks	_____	_____
	___	___
Savings institutions	_____	_____
	___	___
Other loan or finance companies	_____	_____
	___	___
Insurance companies	_____	_____
	___	___
Stock, commodity or other brokerage companies	_____	_____
	___	___
Other businesses:		

(State principal business activity for each creditor and its name.)

_____ _____ _____
_____ ___ ___
_____ _____ _____
_____ ___ ___

Individual creditors:
(State principal business or occupation of each creditor and its name.)

_____ _____ _____
_____ ___ ___
_____ _____ _____
_____ ___ ___

RETURN TO ITEM 3

SCHEDULE C -- SECURITIES.

"Securities" INCLUDES stocks, bonds, mutual funds, limited partnerships, and commodity futures contracts.
"Securities" EXCLUDES certificates of deposit, money market funds, annuity contracts, and insurance policies.

Identify each business or Virginia governmental entity in which you or a member of your immediate family, directly or indirectly, separately or together, own securities valued in excess of $5,000. Name each issuer and type of security individually.

Do not list U.S. Bonds or other government securities not issued by the Commonwealth of Virginia or its authorities, agencies, or local governments. Do not list organizations that do not do business in this Commonwealth, but most major businesses conduct business in Virginia. Account for securities held in trust.
If no reportable securities, check here / /.

Name of Issuer	Type of Security (stocks, bonds, mutual funds, etc.)	Check one $5,001 to $50,000	$50,001 to $250,000	More than $250,000
_____	_____	_____	_____	_____
_____		____	__	__
_____	_____	_____	_____	_____
_____		____	__	__
_____	_____	_____	_____	_____
_____		____	__	__
_____	_____	_____	_____	_____
_____		____	__	__

RETURN TO ITEM 4

SCHEDULE D -- PAYMENTS FOR TALKS, MEETINGS, AND PUBLICATIONS.

List each source from which you received during the past six months in your capacity as an officer or employee of your agency lodging, transportation, money, or any other thing of value with combined value exceeding $100 (i) for your presentation of a single talk, participation in one meeting, or publication of a work or (ii) for your attendance at a meeting, conference, or event where your attendance at the meeting, conference, or event was designed to (a) educate you on issues relevant to your duties as an officer or employee of your agency or (b) enhance your knowledge and skills relative to your duties as an officer or employee of your agency. Any lodging, transportation, money, or other thing of value received by an officer or employee that does not satisfy the provisions of clause (i), (ii) (a), or (ii) (b) shall be listed as a gift on Schedule E.

List payments or reimbursements by an advisory or governmental agency only for meetings or travel outside the Commonwealth.

List a payment even if you donated it to charity.

Do not list information about a payment if you returned it within 60 days or if you received it from an employer already listed under Item 6 or from a source of income listed on Schedule F.

If no payment must be listed, check here / /.

Payer	Approximate Value	Circumstances	Type of payment (e.g., honoraria, travel reimbursement, etc.)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

RETURN TO ITEM 5

SCHEDULE E -- GIFTS.

List each business, governmental entity, or individual that, during the past six months, (i) furnished you or a member of your immediate family with any gift or entertainment at a single event, and the value received exceeded $50 or (ii) furnished you or a member of your immediate family with gifts or entertainment in any combination and the total value received exceeded $50, and for which you or the member of your immediate family neither paid nor rendered services in exchange. List each such gift or event. Do not list entertainment events unless the average value per person attending the event exceeded $50. Do not list business entertainment related to the

private profession or occupation of you or the member of your immediate family who received such business entertainment. Do not list gifts or other things of value given by a relative or personal friend for reasons clearly unrelated to your public position. Do not list campaign contributions publicly reported as required by Chapter 9.3 (§ 24.2-945 et seq.) of Title 24.2 of the Code of Virginia.

Name of Recipient	Name of Business, Organization, or Individual	City or County and State	Exact Gift or Event	Approximate Value
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

RETURN TO ITEM 6

SCHEDULE F -- BUSINESS INTERESTS.

Complete this Schedule for each self-owned or family-owned business (including rental property, a farm, or consulting work), partnership, or corporation in which you or a member of your immediate family, separately or together, own an interest having a value in excess of $5,000.

If the enterprise is owned or operated under a trade, partnership, or corporate name, list that name; otherwise, merely explain the nature of the enterprise. If rental property is owned or operated under a trade, partnership, or corporate name, list the name only; otherwise, give the address of each property. Account for business interests held in trust.

Name of Business, Corporation, Partnership, Farm; Address of Rental Property	City or County and State	Nature of Enterprise (farming, law, rental property, etc.)	Gross Income		
			$50,000 or less	$50,001 to $250,000	More than $250,000
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

_____ _____ _____ _

excluding representation consisting solely of the filing of mandatory papers and subsequent representation regarding the mandatory papers filed by your partners, associates or others with whom you have a close financial association.

Identify such businesses by type and also name the state governmental agencies before which such person appeared on behalf of such businesses.

Only STATE officers and employees should complete this Schedule.

Type of business	Name of state governmental agency
_____	_____
_____	_____
_____	_____
_____	_____

SCHEDULE G-3 -- PAYMENTS FOR OTHER SERVICES GENERALLY.

Indicate below types of businesses that operate in Virginia to which services were furnished by you or persons with whom you have a close financial association pursuant to an agreement between you and such businesses, or between persons with whom you have a close financial association and such businesses and for which total compensation in excess of $1,000 was received during the past six months. Services reported in this Schedule shall not include services involving the representation of businesses that are reported in Schedule G-1 or G-2.

Identify opposite each category of businesses listed below (i) the type of business, (ii) the type of service rendered and (iii) the value by dollar category of the compensation received for all businesses falling within each category.

			Value of Compensation				
	Check if services were rendered	Type of service rendered	$1,001 to $10,000	$10,001 to $50,000	$50,001 to $100,000	$100,001 to $250,000	$250,001 and over
Electric utilities	_____	_____	_____	_____	_____	_____	_____
Gas utilities	_____	_____	_____	_____	_____	_____	_____
Telephone utilities	_____	_____	_____	_____	_____	_____	_____
Water utilities	_____	_____	_____	_____	_____	_____	_____
Cable television companies	_____	_____	_____	_____	_____	_____	_____
Intrastate trans-	_____	_____	_____	_____	_____	_____	_____

portation companies	_	_	__	__	_	_	_
Oil or gas retail companies	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Banks	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Savings institutions	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Loan or finance companies	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Manufacturing companies (state type of product, e.g., textile, furniture, etc.)	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Mining companies	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Life insurance companies	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Casualty insurance companies	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Other insurance companies	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Retail companies	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Beer, wine or liquor companies or distributors	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Trade associations	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Professional associations	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Associations of public employees or officials	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Counties, cities or towns	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_
Labor organizations	_____	_____	_____	_____	_____	_____	_____
	_	_	__	__	_	_	_

Other	_____	_____	_____	_____	_____	_____	_____

RETURN TO ITEM 9

SCHEDULE H-1 -- REAL ESTATE -- STATE OFFICERS AND EMPLOYEES.

List real estate other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest, option, easement, or land contract, valued at more than $5,000. Each parcel shall be listed individually.

List each location (state, and county or city) where you own real estate.	Describe the type of real estate you own in each location (business, recreational, apartment, commercial, open land, etc.).	If the real estate is owned or recorded in a name other than your own, list that name.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

SCHEDULE H-2 -- REAL ESTATE -- LOCAL OFFICERS AND EMPLOYEES.

List real estate other than your principal residence in which you or a member of your immediate family holds an interest, including a partnership interest or option, easement, or land contract, valued at more than $5,000. Each parcel shall be listed individually. Also list the names of any co-owners of such property, if applicable.

List each location (state, and county or city) where you own real estate.	Describe the type of real estate you own in each location (business, recreational, apartment, commercial, open land, etc.).	If the real estate is owned or recorded in a name other than your own, list that name.	List the names of any co-owners, if applicable.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

_____ _____ _____ _____
_____ _____ _____ _____

SCHEDULE I -- REAL ESTATE CONTRACTS WITH GOVERNMENTAL AGENCIES.

List all contracts, whether pending or completed within the past six months, with a governmental agency for the sale or exchange of real estate in which you or a member of your immediate family holds an interest, including a corporate, partnership or trust interest, option, easement, or land contract, valued at more than $10,000. List all contracts with a governmental agency for the lease of real estate in which you or a member of your immediate family holds such an interest valued at more than $1,000. This requirement to disclose an interest in a lease does not apply to an interest derived through an ownership interest in a business unless the ownership interest exceeds three percent of the total equity of the business.

State officers and employees report contracts with state agencies.

Local officers and employees report contracts with local agencies.

List your real estate interest and the person or entity, including the type of entity, which is party to the contract. Describe any management role and the percentage ownership interest you or your immediate family member has in the real estate or entity.	List each governmental agency which is a party to the contract and indicate the county or city where the real estate is located.	State the annual income from the contract, and the amount, if any, of income you or any immediate family member derives annually from the contract.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

1987, Sp. Sess., c. 1, § 2.1-639.15; 1988, c. 849; 1994, cc. 724, 733, 777, 793; 1995, c. 763; 1996, c. 77; 1997, cc. 577, 844; 1998, c. 732; 2001, c. 844; 2006, cc. 310, 779, 787, 892; 2008, c. 239; 2010, c. 670; 2012, c. 429; 2014, cc. 792, 804; 2015, cc. 763, 777.

§ 2.2-3117. (Effective January 1, 2017) Disclosure form

The disclosure form to be used for filings required by subsections A and D of § 2.2-3114 and subsections A and E of § 2.2-3115 shall be prescribed by the Council. Except as otherwise provided in § 2.2-3115, all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356. Any person who knowingly and intentionally makes a false statement of a material fact on the Statement of Economic Interests is guilty of a Class 5 felony.

1987, Sp. Sess., c. 1, § 2.1-639.15; 1988, c. 849; 1994, cc. 724, 733, 777, 793; 1995, c. 763; 1996, c. 77; 1997, cc. 577, 844; 1998, c. 732; 2001, c. 844; 2006, cc. 310, 779, 787, 892; 2008, c. 239; 2010, c. 670; 2012, c. 429; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-3118. (Effective until January 1, 2017) Disclosure form; certain citizen members

A. The financial disclosure form to be used for filings required pursuant to subsection B of § 2.2-3114 and subsection B of § 2.2-3115 shall be filed in accordance with the provisions of § 30-356. The financial disclosure form shall be substantially similar to the following. Except as otherwise provided in § 2.2-3115, all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356.

DEFINITIONS AND EXPLANATORY MATERIAL.

"Business" means a corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, trust or foundation, or any other individual or entity carrying on a business or profession, whether or not for profit.

"Close financial association" means an association in which the person filing shares significant financial involvement with an individual and the filer would reasonably be expected to be aware of the individual's business activities and would have access to the necessary records either directly or through the individual.

"Close financial association" does not mean an association based on (i) the receipt of retirement benefits or deferred compensation from a business by which the person filing this statement is no longer employed, or (ii) the receipt of compensation for work performed by the person filing as an independent contractor of a business that represents an entity before any state governmental agency when the person filing has no communications with the state governmental agency.

"Contingent liability" means a liability that is not presently fixed or determined, but may become fixed or determined in the future with the occurrence of some certain event.

"Immediate family" means (i) a spouse and (ii) any other person who resides in the same household as the filer and who is a dependent of the filer.

"Personal interest" means, for the purposes of this form only, a personal and financial benefit or liability accruing to a filer or a member of his immediate family. Such interest shall exist by reason of (i) ownership in real or personal property, tangible or intangible; (ii) ownership in a business; (iii) income from a business; or (iv) personal liability on behalf of a business; however, unless the

ownership interest in a business exceeds three percent of the total equity of the business, or the liability on behalf of a business exceeds three percent of the total assets of the business, or the annual income, and/or property or use of such property, from the business exceeds $10,000 or may reasonably be anticipated to exceed $10,000, such interest shall not constitute a "personal interest."

Name_____

Office or position held or to be held

_____

Address_____

I. FINANCIAL INTERESTS

My personal interests and those of my immediate family are as follows:

Include all forms of personal interests held at the time of filing: real estate, stocks, bonds, equity interests in proprietorships and partnerships. You may exclude:

1. Deposits and interest bearing accounts in banks, savings institutions and other institutions accepting such deposits or accounts;

2. Interests in any business, other than a news medium, representing less than three percent of the total equity value of the business;

3. Liability on behalf of any business representing less than three percent of the total assets of such business; and

4. Income (other than from salary) less than $10,000 annually from any business. You need not state the value of any interest. You must state the name or principal business activity of each business in which you have a personal interest.

A. My personal interests are:

1. Residence, address, or, if no address, location

_____

2. Other real estate, address, or, if no address, location

_____

3. Name or principal business activity of each business in which stock, bond or equity interest is held

_____

B. The personal interests of my immediate family are:

1. Real estate, address or, if no address, location

_____

2. Name or principal business activity of each business in which stock, bond or equity interest is held

_____

II. OFFICES, DIRECTORSHIPS AND SALARIED EMPLOYMENTS

The paid offices, paid directorships and salaried employments which I hold or which members of my immediate family hold and the businesses from which I or members of my immediate family receive retirement benefits are as follows:

(You need not state any dollar amounts.)

A. My paid offices, paid directorships and salaried employments are:

Position held	Name of business
_____	_____
_____	_____
_____	_____

B. The paid offices, paid directorships and salaried employments of members of my immediate family are:

Position held	Name of business
_____	_____
_____	_____
_____	_____

III. BUSINESSES TO WHICH SERVICES WERE FURNISHED

A. The businesses I have represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, for which I have received total compensation in excess of $1,000 during the preceding year, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers, are as follows:

Identify businesses by name and name the state governmental agencies before which you appeared on behalf of such businesses.

Name of business	Name of governmental agency
_____	_____
_____	_____
_____	_____

B. The businesses that, to my knowledge, have been represented, excluding activity defined as lobbying in § 2.2-419, before any state governmental agency, excluding any court or judge, by persons with whom I have a close financial association and who received total compensation in excess of $1,000 during the preceding year, excluding compensation for other services to such businesses and representation consisting solely of the filing of mandatory papers, are as follows:

Identify businesses by type and name the state governmental agencies before which such person appeared on behalf of such businesses.

Type of business	Name of state governmental agency
_____	_____
_____	_____
_____	_____

C. All other businesses listed below that operate in Virginia to which services were furnished pursuant to an agreement between you and such businesses and for which total compensation in excess of $1,000 was received during the preceding year:

Check each category of business to which services were furnished.

Electric utilities	_____
Gas utilities	_____
Telephone utilities	_____
Water utilities	_____
Cable television companies	_____
Intrastate transportation companies	_____
Interstate transportation companies	_____
Oil or gas retail companies	_____
Banks	_____
Savings institutions	_____
Loan or finance companies	_____
Manufacturing companies (state type of product, e.g., textile, furniture, etc.)	_____
Mining companies	_____
Life insurance companies	_____
Casualty insurance companies	_____
Other insurance companies	_____
Retail companies	_____
Beer, wine or liquor companies or distributors	_____
Trade associations	_____
Professional associations	_____
Associations of public employees or officials	_____
Counties, cities or towns	_____
Labor organizations	_____

IV. COMPENSATION FOR EXPENSES

The persons, associations, or other sources other than my governmental agency from which I or a member of my immediate family received remuneration in excess of $100 during the preceding

year, in cash or otherwise, as honorariums or payment of expenses in connection with my attendance at any meeting or other function to which I was invited in my official capacity are as follows:

Name of Source	Description of occasion	Amount of remuneration for each occasion
_____	_____	_____
_____	_____	_____
_____	_____	_____

B. The provisions of Part III A and B of the disclosure form prescribed by this section shall not be applicable to officers and employees of local governmental and local advisory agencies.

C. Except for real estate located within the county, city or town in which the officer or employee serves or a county, city or town contiguous to the county, city or town in which the officer or employee serves, officers and employees of local governmental or advisory agencies shall not be required to disclose under Part I of the form any other interests in real estate.

1988, c. 849, § 2.1-639.15:1; 1996, c. 77; 2001, c. 844; 2006, c. 779; 2011, cc. 123, 177; 2014, cc. 792, 804; 2015, cc. 763, 777.

§ 2.2-3118. (Effective January 1, 2017) Disclosure form; certain citizen members

The financial disclosure form to be used for filings required pursuant to subsection B of § 2.2-3114 and subsection B of § 2.2-3115 shall be filed in accordance with the provisions of § 30-356. The financial disclosure form shall be prescribed by the Council. Except as otherwise provided in § 2.2-3115, all completed forms shall be filed electronically with the Council in accordance with the standards approved by it pursuant to § 30-356.

1988, c. 849, § 2.1-639.15:1; 1996, c. 77; 2001, c. 844; 2006, c. 779; 2011, cc. 123, 177; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, cc. 773, 774.

§ 2.2-3118.1. Special provisions for individuals serving in or seeking multiple positions or offices; reappointees

A. The filing of a single current statement of economic interests by an individual required to file the form prescribed in § 2.2-3117 shall suffice for the purposes of this chapter as filing for all positions or offices held or sought by such individual during a single reporting period. The filing of a single current financial disclosure statement by an individual required to file the form prescribed in § 2.2-3118 shall suffice for the purposes of this chapter as filing for all positions or offices held or sought by such individual and requiring the filing of the § 2.2-3118 form during a single reporting period.

B. Any individual who has met the requirement for periodically filing a statement provided in § 2.2-3117 or 2.2-3118 shall not be required to file an additional statement upon such individual's reappointment to the same office or position for which he is required to file, provided such reappointment occurs within six months after filing a statement pursuant to § 2.2-3117 and within 12 months after filing a statement pursuant to § 2.2-3118.

2005, c. 397; 2014, cc. 792, 804; 2016, cc. 773, 774.

Article 6 - SCHOOL BOARDS AND EMPLOYEES OF SCHOOL BOARDS

§ 2.2-3119. Additional provisions applicable to school boards and employees of school boards; exceptions

A. Notwithstanding any other provision of this chapter, it shall be unlawful for the school board of any county or city or of any town constituting a separate school division to employ or pay any teacher or other school board employee from the public funds, federal, state or local, or for a division superintendent to recommend to the school board the employment of any teacher or other employee, if the teacher or other employee is the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law or brother-in-law of the superintendent, or of any member of the school board.

This section shall apply to any person employed by any school board in the operation of the public free school system, adult education programs or any other program maintained and operated by a local county, city or town school board.

B. This section shall not be construed to prohibit the employment, promotion, or transfer within a school division of any person within a relationship described in subsection A when such person:

1. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the taking of office of any member of such board or division superintendent of schools; or

2. Has been employed pursuant to a written contract with a school board or employed as a substitute teacher or teacher's aide by a school board prior to the inception of such relationship; or

3. Was employed by a school board at any time prior to June 10, 1994, and had been employed at any time as a teacher or other employee of any Virginia school board prior to the taking of office of any member of such school board or division superintendent of schools.

C. A person employed as a substitute teacher may not be employed to any greater extent than he was employed by the school board in the last full school year prior to the taking of office of such board member or division superintendent or to the inception of such relationship. The exceptions in subdivisions B 1, B 2, and B 3 shall apply only if the prior employment has been in the same school divisions where the employee and the superintendent or school board member now seek to serve simultaneously.

D. If any member of the school board or any division superintendent knowingly violates these provisions, he shall be personally liable to refund to the local treasury any amounts paid in violation of this law, and the funds shall be recovered from the individual by action or suit in the name of the Commonwealth on the petition of the attorney for the Commonwealth. Recovered funds shall be paid into the local treasury for the use of the public schools.

E. The provisions of this section shall not apply to employment by a school district located in Planning Districts 3, 11, 12, and 13 of the father, mother, brother, sister, spouse, son, daughter, son-in-law, daughter-in-law, sister-in-law, or brother-in-law of any member of the school board provided (i) the member certifies that he had no involvement with the hiring decision and (ii) the superintendent certifies to the remaining members of the governing body in writing that the employment is based upon merit and fitness and the competitive rating of the qualifications of the individual and that no member of the board had any involvement with the hiring decision.

1987, Sp. Sess., c. 1, § 2.1-639.16; 1994, c. 758; 1995, c. 186; 1997, c. 84; 2001, c. 844; 2010, cc. 676, 759; 2011, c. 517.

Article 7 - PENALTIES AND REMEDIES

§ 2.2-3120. Knowing violation of chapter a misdemeanor

Any person who knowingly violates any of the provisions of Articles 2 through 6 (§§ 2.2-3102 through 2.2-3119) of this chapter shall be guilty of a Class 1 misdemeanor, except that any member of a local governing body who knowingly violates subsection A of § 2.2-3112 or subsection D or F of § 2.2-3115 shall be guilty of a Class 3 misdemeanor. A knowing violation under this section is one in which the person engages in conduct, performs an act or refuses to perform an act when he knows that the conduct is prohibited or required by this chapter.

1987, Sp. Sess., c. 1, § 2.1-639.17; 2001, c. 844; 2012, c. 429.

§ 2.2-3121. Advisory opinions

A. A state officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the Attorney General or the Virginia Conflict of Interest and Ethics Advisory Council made in response to his written request for such opinion and the opinion was made after a full disclosure of the facts regardless of whether such opinion is later withdrawn provided the alleged violation occurred prior to the withdrawal of the opinion.

B. A local officer or employee shall not be prosecuted for a knowing violation of this chapter if the alleged violation resulted from his good faith reliance on a written opinion of the attorney for the Commonwealth or the Council made in response to his written request for such opinion and the opinion was made after a full disclosure of the facts regardless of whether such opinion is later withdrawn, provided that the alleged violation occurred prior to the withdrawal of the opinion. The written opinion shall be a public record and shall be released upon request.

C. If any officer or employee serving at the local level of government is charged with a knowing violation of this chapter, and the alleged violation resulted from his reliance upon a written opinion of his county, city, or town attorney, made after a full disclosure of the facts, that such action was not in violation of this chapter, then the officer or employee shall have the right to introduce a copy of the opinion at his trial as evidence that he did not knowingly violate this chapter.

1987, Sp. Sess., c. 1, § 2.1-639.18; 2001, c. 844; 2003, c. 694; 2014, cc. 792, 804; 2015, cc. 763, 777; 2016, c. 665.

§ 2.2-3122. Knowing violation of chapter constitutes malfeasance in office or employment

Any person who knowingly violates any of the provisions of this chapter shall be guilty of malfeasance in office or employment. Upon conviction thereof, the judge or jury trying the case, in addition to any other fine or penalty provided by law, may order the forfeiture of such office or employment.

1987, Sp. Sess., c. 1, § 2.1-639.19; 2001, c. 844.

§ 2.2-3123. Invalidation of contract; recision of sales

A. Any contract made in violation of § 2.2-3103 or §§ 2.2-3106 through 2.2-3109 may be declared void and may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such contract. In cases in which the contract is invalidated, the contractor shall retain or receive only the reasonable value, with no increment for profit or commission, of the property or services furnished prior to the date of receiving notice that the contract has been voided. In cases of recision of a contract of sale, any refund or restitution shall be made to the contracting or selling governmental agency.

B. Any purchase by an officer or employee made in violation of § 2.2-3103 or §§ 2.2-3106 through 2.2-3109 may be rescinded by the governing body of the contracting or selling governmental agency within five years of the date of such purchase.

1987, Sp. Sess., c. 1, § 2.1-639.20; 2001, c. 844.

§ 2.2-3124. Civil penalty from violation of this chapter

A. In addition to any other fine or penalty provided by law, an officer or employee who knowingly violates any provision of §§ 2.2-3103 through 2.2-3112 shall be subject to a civil penalty in an amount equal to the amount of money or thing of value received as a result of such violation. If the thing of value received by the officer or employee in violation of §§ 2.2-3103 through 2.2-3112 increases in value between the time of the violation and the time of discovery of the violation, the greater value shall determine the amount of the civil penalty. Further, all money or other things of value received as a result of such violation shall be forfeited in accordance with the provisions of § 19.2-386.33.

B. An officer or employee required to file the disclosure form prescribed by § 2.2-3117 who fails to file such form within the time period prescribed shall be assessed a civil penalty in an amount equal to $250. The Council shall notify the Attorney General of any state officer's or employee's

failure to file the required form and the Attorney General shall assess and collect the civil penalty. The clerk of the school board or the clerk of the governing body of the county, city, or town shall notify the attorney for the Commonwealth for the locality in which the officer or employee was elected or is employed of any local officer's or employee's failure to file the required form and the attorney for the Commonwealth shall assess and collect the civil penalty. The Council shall notify the Attorney General and the clerk shall notify the attorney for the Commonwealth within 30 days of the deadline for filing. All civil penalties collected pursuant to this subsection shall be deposited into the general fund and used exclusively to fund the Council.

1987, Sp. Sess., c. 1, § 2.1-639.21; 1994, cc. 727, 776; 2001, c. 844; 2012, cc. 283, 756; 2015, cc. 763, 777.

§ 2.2-3125. Limitation of actions

The statute of limitations for the criminal prosecution of a person for violation of any provision of this chapter shall be one year from the time the Attorney General, if the violation is by a state officer or employee, or the attorney for the Commonwealth, if the violation is by a local officer or employee, has actual knowledge of the violation or five years from the date of the violation, whichever event occurs first. Any prosecution for malfeasance in office shall be governed by the statute of limitations provided by law.

1987, Sp. Sess., c. 1, § 2.1-639.22; 2001, c. 844.

§ 2.2-3126. Enforcement

A. The provisions of this chapter relating to an officer or employee serving at the state level of government shall be enforced by the Attorney General.

In addition to any other powers and duties prescribed by law, the Attorney General shall have the following powers and duties within the area for which he is responsible under this section:

1. He shall advise the agencies of state government and officers and employees serving at the state level of government on appropriate procedures for complying with the requirements of this chapter. He may review any disclosure statements, without notice to the affected person, for the purpose of determining satisfactory compliance, and shall investigate matters that come to his attention reflecting possible violations of the provisions of this chapter by officers and employees serving at the state level of government;

2. If he determines that there is a reasonable basis to conclude that any officer or employee serving at the state level of government has knowingly violated any provision of this chapter, he shall designate an attorney for the Commonwealth who shall have complete and independent discretion in the prosecution of such officer or employee;

3. He shall render advisory opinions to any state officer or employee who seeks advice as to whether the facts in a particular case would constitute a violation of the provisions of this chapter. He shall determine which opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

B. The provisions of this chapter relating to an officer or employee serving at the local level of government shall be enforced by the attorney for the Commonwealth within the political subdivision for which he is elected.

Each attorney for the Commonwealth shall be responsible for prosecuting violations by an officer or employee serving at the local level of government and, if the Attorney General designates such attorney for the Commonwealth, violations by an officer or employee serving at the state level of government. In the event the violation by an officer or employee serving at the local level of government involves more than one local jurisdiction, the Attorney General shall designate which of the attorneys for the Commonwealth of the involved local jurisdictions shall enforce the provisions of this chapter with regard to such violation.

Each attorney for the Commonwealth shall establish an appropriate written procedure for implementing the disclosure requirements of local officers and employees of his county, city or town, and for other political subdivisions, whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. The attorney for the Commonwealth shall provide a copy of this act to all local officers and employees in the jurisdiction served by such attorney who are required to file a disclosure statement pursuant to Article 5 (§ 2.2-3113 et seq.) of this chapter. Failure to receive a copy of the act shall not be a defense to such officers and employees if they are prosecuted for violations of the act.

Each attorney for the Commonwealth shall render advisory opinions as to whether the facts in a particular case would constitute a violation of the provisions of this chapter to the governing body and any local officer or employee in his jurisdiction and to political subdivisions other than a county, city or town, including regional political subdivisions whose principal offices are located within the jurisdiction served by such attorney for the Commonwealth. If the advisory opinion is written, then such written opinion shall be a public record and shall be released upon request. In case the opinion given by the attorney for the Commonwealth indicates that the facts would constitute a violation, the officer or employee affected thereby may request that the Attorney General review the opinion. A conflicting opinion by the Attorney General shall act to revoke the opinion of the attorney for the Commonwealth. The Attorney General shall determine which of his reviewing opinions or portions thereof are of general interest to the public and may, from time to time, be published.

Irrespective of whether an opinion of the attorney for the Commonwealth or the Attorney General has been requested and rendered, any person has the right to seek a declaratory judgment or other judicial relief as provided by law.

1987, Sp. Sess., c. 1, § 2.1-639.23; 2001, c. 844; 2003, c. 694.

§ 2.2-3127. Venue

Any prosecution for a violation involving an officer serving at the state level of government shall be brought in the Circuit Court of the City of Richmond. Any prosecution for a violation involving an employee serving at the state level of government shall be within the jurisdiction in which the employee has his principal place of state employment.

Any proceeding provided in this chapter shall be brought in a court of competent jurisdiction within the county or city in which the violation occurs if the violation involves an officer or employee serving at the local level of government.

1987, Sp. Sess., c. 1, § 2.1-639.24; 2001, c. 844.

Article 8 - ORIENTATION FOR STATE FILERS

§ 2.2-3128. Semiannual orientation course

Each state agency shall offer at least semiannually to each of its state filers an orientation course on this chapter, on ethics in public contracting pursuant to Article 6 (§ 2.2-4367 et seq.) of Chapter 43 of this title, if applicable to the filer, and on any other applicable regulations that govern the official conduct of state officers and employees.

2004, cc. 134, 392.

§ 2.2-3129. Records of attendance

Each state agency shall maintain records indicating the specific attendees, each attendee's job title, and dates of their attendance for each orientation course offered pursuant to § 2.2-3128 for a period of not less than five years after each course is given. These records shall be public records subject to inspection and copying consistent with § 2.2-3704.

2004, cc. 134, 392.

§ 2.2-3130. Attendance requirements

Except as set forth in § 2.2-3131, each state filer shall attend the orientation course required in § 2.2-3128, as follows:

1. For a state filer who holds a position with the agency on January 1, 2004, not later than December 31, 2004 and, thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2006.

2. For a person who becomes a state filer with the agency after January 1, 2004, within two months after he or she becomes a state filer and at least once during each consecutive period of two calendar years commencing on the first odd-numbered year thereafter.

2004, cc. 134, 392.

§ 2.2-3131. Exemptions

A. The requirements of § 2.2-3130 shall not apply to state filers with a state agency who have taken an equivalent ethics orientation course through another state agency within the time periods set forth in subdivision 1 or 2 of § 2.2-3130, as applicable.

B. State agencies may jointly conduct and state filers from more than one state agency may jointly attend an orientation course required by § 2.2-3128, as long as the course content is relevant to the official duties of the attending state filers.

C. Before conducting each orientation course required by § 2.2-3128, state agencies shall consult with the Attorney General and the Virginia Conflict of Interest and Ethics Advisory Council regarding appropriate course content.

2004, cc. 134, 392; 2014, cc. 792, 804.

Chapter 32 - WORKFORCE TRANSITION ACT OF 1995

§ 2.2-3200. Short title; purpose

A. This chapter shall be known as the Workforce Transition Act of 1995.

B. The purpose of this chapter is to provide a transitional severance benefit, under the conditions specified, to eligible state employees who are involuntarily separated from their employment with the Commonwealth. "Involuntary separation" includes, but is not limited to, terminations and layoffs from employment with the Commonwealth, or being placed on leave without pay-layoff or equivalent status, due to budget reductions, agency reorganizations, workforce down-sizings, or other causes not related to the job performance or misconduct of the employee, but shall not include voluntary resignations. As used in this chapter, a "terminated employee" shall mean an employee who is involuntarily separated from employment with the Commonwealth.

1995, cc. 152, 811, § 2.1-116.20; 2001, c. 844.

§ 2.2-3201. Duties of Department of Human Resource Management and executive branch agencies to involuntarily separated employees

A. Prior to terminating or placing on leave without pay-layoff or equivalent status any employee of an agency or institution in the executive branch of state government, the management of the agency or institution shall make every effort to place the employee in any vacant position within the agency for which the employee is qualified. If reemployment within the agency or institution is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary, the name of the employee shall be forwarded to the Department of Human Resource Management (the "Department").

B. Any preferential employment rights vested in the employee under the Commonwealth's layoff policy shall not be denied, abridged, or modified in any way by the Department. The Department shall coordinate the preferential hiring of the employee, at the same salary classification, in any agency or institution of the executive branch of state government. The Department shall also establish a program to assist employees in finding employment outside of state government.

C. If, as of the date the employee is terminated from employment or placed on leave without pay-layoff or equivalent status, reemployment within his agency or institution or any other agency or

institution of the executive branch of state government is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary, then the employee shall be deemed to be involuntarily separated. If such employee is otherwise eligible, he shall be entitled, under the conditions specified, to receive the transitional severance benefit conferred by this chapter.

D. The Department shall report all involuntary separations in the executive branch of state government to the Department of Planning and Budget, which shall make an appropriate reduction, pursuant to § 2.2-1501, in the terminating agency's maximum employment level in preparing its executive budget for the next session of the General Assembly.

1995, cc. 152, 811, § 2.1-116.21; 2000, cc. 66, 657; 2001, c. 844.

§ 2.2-3202. Eligibility for transitional severance benefit

A. Any full-time employee of the Commonwealth (i) whose position is covered by the Virginia Personnel Act (§ 2.2-2900 et seq.), (ii) whose position is exempt from the Virginia Personnel Act pursuant to subdivisions 2, 4 (except those persons specified in subsection C of this section), 7, 15 or 16 of § 2.2-2905, (iii) who is employed by the State Corporation Commission, (iv) who is employed by the Virginia Workers' Compensation Commission, (v) who is employed by the Virginia Retirement System, (vi) who is employed by the Virginia Lottery, (vii) who is employed by the Medical College of Virginia Hospitals or the University of Virginia Medical Center, (viii) who is employed at a state educational institution as faculty (including, but not limited to, presidents and teaching and research faculty) as defined in the Consolidated Salary Authorization for Faculty Positions in Institutions of Higher Education, 1994-95, or (ix) whose position is exempt from the Virginia Personnel Act pursuant to subdivision 3 or 20 of § 2.2-2905; and (a) for whom reemployment with the Commonwealth is not possible because there is no available position for which the employee is qualified or the position offered to the employee requires relocation or a reduction in salary and (b) whose involuntary separation was due to causes other than job performance or misconduct, shall be eligible, under the conditions specified, for the transitional severance benefit conferred by this chapter. The date of involuntary separation shall mean the date an employee was terminated from employment or placed on leave without pay-layoff or equivalent status.

B. An otherwise eligible employee whose position is contingent upon project grants as defined in the Catalogue of Federal Domestic Assistance, shall not be eligible for the transitional severance benefit conferred by this chapter unless the funding source had agreed to assume all financial responsibility therefor in its written contract with the Commonwealth.

C. Members of the Judicial Retirement System (§ 51.1-300 et seq.) and officers elected by popular vote shall not be eligible for the transitional severance benefit conferred by this chapter.

D. Eligibility shall commence on the date of involuntary separation.

E. Persons authorized by § 2.2-106 or 51.1-124.22 to appoint a chief administrative officer or the administrative head of an agency shall adhere to the same criteria for eligibility for transitional severance benefits as is required for gubernatorial appointees pursuant to subsection A.

1995, cc. 152, 811, § 2.1-116.22; 2001, c. 844; 2002, c. 491; 2003, c. 782; 2006, cc. 813, 902; 2014, c. 225.

§ 2.2-3203. Transitional severance benefit conferred

A. On his date of involuntary separation, an eligible employee with (i) two years' service or less to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to four weeks of salary; (ii) three years through and including nine years of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to four weeks of salary plus one additional week of salary for every year of service over two years; (iii) ten years through and including fourteen years of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to twelve weeks of salary plus two additional weeks of salary for every year of service over nine years; or (iv) fifteen years or more of consecutive service to the Commonwealth shall be entitled to receive a transitional severance benefit equivalent to two weeks of salary for every year of service, not to exceed thirty-six weeks of salary.

B. Transitional severance benefits shall be computed by the terminating agency's payroll department. Partial years of service shall be rounded up to the next highest year of service.

C. Transitional severance benefits shall be paid in the same manner as normal salary. In accordance with § 60.2-229, transitional severance benefits shall be allocated to the date of involuntary separation. The right of any employee who receives a transitional severance benefit to also receive unemployment compensation pursuant to § 60.2-100 et seq. shall not be denied, abridged, or modified in any way due to receipt of the transitional severance benefit; however, any employee who is entitled to unemployment compensation shall have his transitional severance benefit reduced by the amount of such unemployment compensation. Any offset to a terminated employee's transitional severance benefit due to reductions for unemployment compensation shall be paid in one lump sum at the time the last transitional severance benefit payment is made.

D. For twelve months after the employee's date of involuntary separation, the employee shall continue to be covered under the (i) health insurance plan created in § 2.2-2818 for the Commonwealth's employees, if he participated in such plan prior to his date of involuntary separation, and (ii) group life insurance plan administered by the Virginia Retirement System pursuant to Chapter 5 (§ 51.1-500 et seq.) of Title 51.1. During such twelve months, the terminating agency shall continue to pay its share of the terminated employee's premiums. Upon expiration of such twelve month period, the terminated employee shall be eligible to purchase continuing health insurance coverage under COBRA.

E. Transitional severance benefit payments shall cease if a terminated employee is reemployed or hired in an individual capacity as an independent contractor or consultant by any agency or institution of the Commonwealth during the time he is receiving such payments.

F. All transitional severance benefits payable pursuant to this section shall be subject to applicable federal laws and regulations.

1995, cc. 152, 811, § 2.1-116.23; 2001, c. 844.

§ 2.2-3204. Retirement program

A. In lieu of the transitional severance benefit provided in § 2.2-3203, any otherwise eligible employee who, on the date of involuntary separation, is also (i) a vested member of the Virginia Retirement System, the State Police Officers' Retirement System, or the Virginia Law Officers' Retirement System and (ii) at least 50 years of age, may elect to have the Commonwealth purchase on his behalf years to be credited to either his age or creditable service or a combination of age and creditable service, except that any years of credit purchased on behalf of a member of the Virginia Retirement System, the State Police Officers' Retirement System, or the Virginia Law Officers' Retirement System who is eligible for unreduced retirement shall be added to his creditable service and not his age. If the otherwise eligible employee is (a) a person who becomes a member on or after July 1, 2010, a person who does not have 60 months of creditable service as of January 1, 2013, or a person who is enrolled in the hybrid retirement program described in § 51.1-169; (b) not a member of the State Police Officers' Retirement System or the Virginia Law Officers' Retirement System; and (c) a person to whom the provisions of subdivision B 3 of § 51.1-153 do not apply, then he must be at least 60 years of age on the date of involuntary separation to be eligible for the retirement program provided in this subsection. The cost of each year of age or creditable service purchased by the Commonwealth shall be equal to 15 percent of the employee's present annual compensation. The number of years of age or creditable service to be purchased by the Commonwealth shall be equal to the quotient obtained by dividing (1) the cash value of the benefits to which the employee would be entitled under subsections A and D of § 2.2-3203 by (2) the cost of each year of age or creditable service. Partial years shall be rounded up to the next highest year. Deferred retirement under the provisions of subsection C of §§ 51.1-153, 51.1-205, and 51.1-216, and disability retirement under the provisions of § 51.1-156 et seq. and § 51.1-209, shall not be available under this section.

B. In lieu of the (i) transitional severance benefit provided in § 2.2-3203 and (ii) the retirement program provided in subsection A, any employee who is otherwise eligible may take immediate retirement pursuant to § 51.1-155.1.

C. 1. The retirement allowance for a person who (i) is not a member of the State Police Officers' Retirement System or the Virginia Law Officers' Retirement System; (ii) becomes a member on or after July 1, 2010, does not have 60 months of creditable service as of January 1, 2013, or is enrolled in the hybrid retirement program described in § 51.1-169; (iii) elects to retire under this

section; and (iv) by adding years to his age is between ages 60 and the age at his "normal retirement date" as defined in § 51.1-124.3 shall be reduced on the actuarial basis provided in subdivision A 3 of § 51.1-155, unless the provisions of subdivision B 3 of § 51.1-153 apply to him.

2. The retirement allowance for any other employee electing to retire under this section who, by adding years to his age, is between ages 55 and 65 shall be reduced on the actuarial basis provided in subdivision A 2 of § 51.1-155.

1995, cc. 152, 811, § 2.1-116.24; 2000, c. 911; 2001, c. 844; 2011, c. 880; 2014, c. 356.

§ 2.2-3205. Costs associated with this chapter; payment

A. The terminating agency shall pay all costs associated with the provisions of this chapter within the twelve months following the date of an employee's involuntary separation, or within such shorter period as may be required. The costs shall be paid first from appropriations available to the terminating agency. If such sums are insufficient, then, if the agency's governing authority certifies that the agency is unable to pay the costs when due from appropriations available to the terminating agency without affecting the agency's ability to deliver essential services, aid to localities, or aid to individuals, the State Treasurer shall make a treasury loan to the agency to be used to finance the unsatisfied balance of the agency's obligations.

B. As used in this section, the "governing authority" shall mean (i) for an agency in the executive branch, the Governor or his designee; (ii) for an agency in the judicial branch, the Supreme Court of Virginia; (iii) and for an agency in the legislative branch or an independent agency, the appropriate collegial body.

C. Any treasury loan made pursuant to subsection A shall be repaid by the agency in the following order: (i) first, from unexpended fund balances available to the agency; (ii) next, from the unexpended year-end balances, less mandated uses as set out in the appropriation act, of all other state agencies and institutions in the terminating agency's branch of government (i.e., judicial, legislative, or executive); and (iii) finally, from such appropriations as the General Assembly may provide for such purpose. In budgeting for the payment of these costs, the general fund shall bear its actual share of such costs.

1995, cc. 152, 811, § 2.1-116.25; 2001, c. 844.

§ 2.2-3206. Review of program

The Senate Committee on Finance and the House Committee on Appropriations shall periodically review the transitional severance program established by this chapter and report their findings to the Governor and the members of the General Assembly every three years beginning on July 1, 1998.

1995, cc. 152, 811, § 2.1-116.26; 2001, c. 844.

Subtitle II - ADMINISTRATION OF STATE GOVERNMENT

Part A - GENERAL PROVISIONS

Chapter 33 - STATE HOLIDAYS AND OTHER SPECIAL DAYS

§ 2.2-3300. Legal holidays

It is the policy of the Commonwealth to fix and set aside certain days in the calendar year as legal holidays for the people of Virginia. In each year, the following days are designated as legal holidays:

January 1 -- New Year's Day.

The Friday preceding the third Monday in January -- Lee-Jackson Day to honor Robert Edward Lee (1807-1870) and Thomas Jonathan (Stonewall) Jackson (1824-1863), defenders of causes.

The third Monday in January -- Martin Luther King, Jr., Day to honor Martin Luther King, Jr., (1929-1968), defender of causes.

The third Monday in February -- George Washington Day to honor George Washington (1732-1799), the first President of the United States.

The last Monday in May -- Memorial Day to honor all persons who made the supreme sacrifice in giving their lives in defense of Virginia and the United States in the following wars and engagements and otherwise: Indian Uprising (1622), French and Indian Wars (1754-1763), Revolutionary War (1775-1783), War of 1812 (1812-1815), Mexican War (1846-1848), War Between the States (1861-1865), Spanish-American War (1898), World War I (1917-1918), World War II (1941-1945), Korean War (1950-1953), Vietnam War (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000-), Operation Enduring Freedom (2001-), and Operation Iraqi Freedom (2003-). On this day all flags, national, state, and local, shall be flown at half staff or mast to honor and acknowledge respect for those who made the supreme sacrifice.

July 4 -- Independence Day to honor the signing of the Declaration of Independence.

The first Monday in September -- Labor Day to honor all people who work in Virginia.

The second Monday in October -- Columbus Day and Yorktown Victory Day to honor Christopher Columbus (1451-1506), a discoverer of the Americas, and the final victory at Yorktown on October 19, 1781, in the Revolutionary War.

November 11 -- Veterans Day to honor all persons who served in the Armed Forces of Virginia and the United States in the following wars and engagements and otherwise: Indian Uprising (1622), French and Indian Wars (1754-1763), Revolutionary War (1775-1783), War of 1812 (1812-1815), Mexican War (1846-1848), War Between the States (1861-1865), Spanish American War (1898), World War I (1917-1918), World War II (1941-1945), Korean War (1950-1953), Vietnam

War (1965-1973), Operation Desert Shield-Desert Storm (1990-1991), Global War on Terrorism (2000-), Operation Enduring Freedom (2001-), and Operation Iraqi Freedom (2003-).

The fourth Thursday in November and the Friday next following -- Thanksgiving Day to honor and give thanks in each person's own manner for the blessings bestowed upon the people of Virginia and honoring the first Thanksgiving in 1619.

December 25 -- Christmas Day.

Whenever any of such days falls on Saturday, the Friday next preceding such day, or whenever any of such days falls on Sunday, the Monday next following such day, and any day so appointed by the Governor of the Commonwealth or the President of the United States, shall be a legal holiday as to the transaction of all business.

Code 1950, § 2-19; 1954, c. 328; 1958, c. 167; 1966, c. 677, § 2.1-21; 1970, c. 682; 1972, c. 114; 1973, c. 421; 1978, c. 7; 1982, c. 325; 1984, c. 671; 1989, c. 190; 1992, c. 622; 1993, cc. 177, 872; 2000, cc. 392, 454; 2001, c. 844; 2010, c. 860.

§ 2.2-3301. Acts, business transactions, legal proceedings, etc., on holidays valid

No contract made, instrument executed, or act done on any of the legal holidays named in § 2.2-3300 or on any Saturday shall be thereby rendered invalid. Nothing in § 2.2-3300 shall be construed to prevent or invalidate the entry, issuance, service or execution of any writ, summons, confession, judgment, order or decree, or other legal process whatever, or the session of the proceedings of any court or judge on any of the legal holidays or Saturdays nor to prevent any bank, banker, banking corporation, firm or association from keeping their doors open and transacting any lawful business on any of the legal holidays or Saturdays.

Code 1950, § 2-20; 1966, c. 677, § 2.1-22; 2001, c. 844.

§ 2.2-3302. Observance of Yorktown Day

The nineteenth day of October of each year shall be recognized and celebrated as Yorktown Day throughout the Commonwealth. The observance of Yorktown Day shall not be considered a paid state holiday.

1983, c. 540, § 2.1-21.1; 2001, c. 844.

§ 2.2-3303. Observance of Motherhood and Apple Pie Day in recognition of the need to prevent infant mortality

A. The twenty-sixth day of January of each year shall be recognized and celebrated as Motherhood and Apple Pie Day throughout the Commonwealth. Upon this date, all citizens of the Commonwealth are urged to reflect upon the need to continue efforts to reduce the state's infant mortality rate to preserve our heritage and to ensure the health and well-being of future generations.

B. On the third Thursday of every session of the Virginia General Assembly, the General Assembly shall give proper recognition to Motherhood and Apple Pie Day in the Commonwealth.

1989, c. 114, § 2.1-21.2; 2001, c. 844.

§ 2.2-3304. Display of flags on Mother's Day

The Governor may issue annually a proclamation calling upon state officials to display the flag of the United States and of the Commonwealth on all public buildings, and the people of the Commonwealth to display such flags at their homes and other suitable places on the second Sunday in May, known as "Mother's Day," as a public expression of love and reverence for the mothers of the Commonwealth.

Code 1950, § 2-21; 1966, c. 677, § 2.1-24; 2001, c. 844.

§ 2.2-3304.1. Little League Challenger Week in Virginia

The first full week of May preceding Mother's Day of each year shall be designated as Little League Baseball Challenger Week in Virginia.

2006, c. 109.

§ 2.2-3305. Commonwealth Day of Prayer

The first Thursday in May of each year shall be designated the "Commonwealth Day of Prayer" and shall be a day on which the people of the Commonwealth may turn to God in prayer and meditation and may celebrate the religious freedom secured for them by the laws of the Commonwealth and nation.

1997, c. 388, § 2.1-24.2; 2001, c. 844.

§ 2.2-3306. Arbor Day

The last Friday in April of each year shall be designated and known as "Arbor Day."

Code 1950, § 2-22; 1966, c. 677, § 2.1-25; 1993, c. 222; 2001, c. 844; 2005, c. 242.

§ 2.2-3307. Dogwood Day

The third Saturday in April of each year shall be known and designated as "Dogwood Day."

1952, c. 111, § 2-22.1; 1966, c. 677, § 2.1-26; 2001, c. 844.

§ 2.2-3308. First Lady's Day in Virginia

Martha Washington's birthday, the second day of June of each year, shall be designated as First Lady's Day in Virginia in special tribute to Martha Washington as America's first First Lady and to each of her successors as First Ladies of this Nation. Upon this date, in perpetuity, all citizens, groups and appropriate agencies in and of the Commonwealth and of the nation are urged to reflect upon and give appropriate recognition to the magnificent contribution of this Nation's First Ladies to the heritage of the United States.

1960, c. 245, § 2-22.3; 1966, c. 677, § 2.1-27; 2001, c. 844.

§ 2.2-3309. Pearl Harbor Remembrance Day

The seventh day of December of each year shall be designated as Pearl Harbor Remembrance Day in the Commonwealth in special tribute to those members of our armed forces who lost their lives, and also to those who survived, the attack on Pearl Harbor, Territory of Hawaii, December 7,

1941. Upon this date, in perpetuity, all citizens of the Commonwealth and the nation are urged to pay homage to the members of our armed forces for the manner in which they bore the attack.

1983, c. 247, § 2.1-27.2; 2001, c. 844.

§ 2.2-3309.1. Virginia World War II Veterans Appreciation Week; Virginia Korean War Veterans Appreciation Week; honorary diplomas to be awarded under certain circumstances during such weeks

A. In recognition of the sacrifice of the members of the United States Armed Forces who served in World War II, the first full week in September, i.e., the week that was the first full official week of peace in 1945, shall hereby be designated the Virginia World War II Veterans Appreciation Week, beginning in September 2001.

In accordance with the Board of Education's guidelines as authorized by § 22.1-17.4, any veteran of World War II may apply for a Commonwealth of Virginia World War II Veteran Honorary High School Diploma by filing with the Virginia Board of Education a statement declaring that:

1. During the years between 1939 and 1945, he served in any branch of the United States Armed Forces and was subsequently honorably discharged;

2. He was drafted or did enlist in the United States Armed Forces while still enrolled as a secondary school student in any school in any state or territory of the United States or any school located on or associated with a United States military base or embassy; and

3. He was unable to resume his secondary education upon returning to civilian life.

B. In recognition of the sacrifice of the members of the United States Armed Forces who served during the Korean War, the first full week in November shall hereby be designated the Virginia Korean War Veterans Appreciation Week, beginning in November 2002.

In accordance with the Board of Education's guidelines as authorized by § 22.1-17.4, any veteran of the Korean War may apply for a Commonwealth of Virginia Korean War Veteran Honorary High School Diploma by filing with the Virginia Board of Education a statement declaring that:

1. During the years between 1950 and 1953, he served in any branch of the United States Armed Forces and was subsequently honorably discharged;

2. He enlisted in or was drafted into the United States Armed Forces while still enrolled as a secondary school student in any school in any state or territory of the United States or any school located on or associated with a United States military base or embassy; and

3. He was unable to resume his secondary education upon returning to civilian life.

C. Upon receiving a statement in compliance with this section and § 22.1-17.4 that has been filed in accordance with its guidelines, the Board of Education shall award the veteran described in subsections A or B, a Commonwealth of Virginia World War II Veteran Honorary High School Diploma or a Commonwealth of Virginia Korean War Veteran Honorary High School Diploma, as

appropriate. Such diploma shall also be delivered during Virginia World War II Veterans Appreciation Week or Virginia Korean War Veterans Appreciation Week, as appropriate.

2001, c. 263, § 2.1-27.2:01; 2002, c. 162; 2009, c. 66.

§ 2.2-3310. Vietnam War Memorial Dedication and Veterans' Recognition Week

A. The first full week of November of each year shall be designated as Vietnam War Memorial Dedication Week and Veterans' Recognition Week in the Commonwealth, to honor in perpetuity the men and women who have served their country as members of the armed forces during the Vietnam War.

B. In accordance with the Board of Education's guidelines as authorized by § 22.1-17.4, any veteran of the Vietnam War may apply for a Commonwealth of Virginia Vietnam War Veteran Honorary High School Diploma by filing with the Virginia Board of Education a statement declaring that:

1. During the years between 1959 and 1975, he served in any branch of the United States Armed Forces and was subsequently honorably discharged;

2. He enlisted in or was drafted into the United States Armed Forces while still enrolled as a secondary school student in any school in any state or territory of the United States or any school located on or associated with a United States military base or embassy; and

3. He was unable to resume his secondary education upon returning to civilian life.

C. Upon receiving a statement in compliance with this section and § 22.1-17.4 that has been filed in accordance with its guidelines, the Board of Education shall award the veteran described in subsection B a Commonwealth of Virginia Vietnam War Veteran Honorary High School Diploma. Such diploma shall also be delivered during Virginia Vietnam War Memorial Dedication and Veterans' Recognition Week in the Commonwealth.

1984, c. 691, § 2.1-27.3; 2001, c. 844; 2003, c. 684; 2009, c. 66.

§ 2.2-3310.1. Display of the POW/MIA flag

It is the sense of the General Assembly that members of the armed forces of the United States who are or were prisoners of war or reported missing in action should be honored and remembered for their service and sacrifice. In observance of that service and sacrifice, all agencies and institutions of the Commonwealth shall display the POW/MIA flag on public buildings on the following days each year:

Armed Forces Day -- the third Saturday in May.

Memorial Day -- the last Monday in May.

Flag Day -- June 14.

Independence Day -- July 4.

National POW/MIA Recognition Day -- the third Friday in September.

Veterans Day -- November 11.

2001, c. 835, § 2.1-27.3:1.

§ 2.2-3310.2. Vietnamese-American Heritage Flag

The flag of the former Republic of Vietnam, with three horizontal red stripes on a field of golden-yellow, which symbolizes freedom and democracy and represents the cultural heritage of Vietnamese-Americans, is recognized by the Commonwealth as the Vietnamese-American Heritage Flag.

2004, c. 970.

§ 2.2-3310.3. Vietnam Human Rights Day

The 11th day of May of each year shall be designated and recognized as Vietnam Human Rights Day in support of efforts by the Non-Violent Movement for Human Rights in Vietnam to achieve freedom and human rights for the people of Vietnam.

2009, c. 489.

§ 2.2-3311. Day of recognition for early childhood and day-care providers and professionals

The Friday before Mother's Day of each year shall be designated as a day of recognition for early childhood and day-care providers and professionals to acknowledge the contributions of and pay tribute to early childhood and day-care providers and professionals who serve the children of the Commonwealth.

1989, c. 132, § 2.1-27.6; 2001, c. 844; 2006, c. 156.

§ 2.2-3311.1. Day of recognition for direct care staffs and other long-term care professionals

The second Wednesday of every June shall be designated as a day of recognition to acknowledge the contributions of and pay tribute to direct care staffs and members of other professions that provide dedicated assistance and health care services to enhance the quality of life of persons receiving long-term care in the Commonwealth.

2005, c. 454.

§ 2.2-3312. Day of recognition for bone marrow donor programs

The eighth day of April of each year shall be designated as a day of recognition for bone marrow donor programs to acknowledge the critical value of these initiatives in facilitating bone marrow transplant therapy and to increase awareness among the citizens of the Commonwealth regarding opportunities to participate in these programs as donors and volunteers.

1992, c. 605, § 2.1-27.7; 2001, c. 844.

§ 2.2-3313. Virginia Drug Free Day

The Saturday of the last week in October of each year shall be designated and known as "Virginia Drug Free Day" to recognize and support education about the dangers of drug abuse, the penalties for drug crimes, the availability of substance abuse programs, and the need to eradicate drug abuse in Virginia's communities.

1994, c. 480, § 2.1-27.8; 2001, c. 844.

§ 2.2-3314. Bill of Rights Day

The fifteenth day of December of each year shall be designated and known as the "Bill of Rights Day" in recognition of the ratification of the first ten amendments to the United States Constitution.

1998, c. 383, § 2.1-27.10; 2001, c. 844.

§ 2.2-3315. Citizenship Day and Constitution Week

The Governor shall annually issue a proclamation setting the seventeenth day of September as Citizenship Day and September seventeen through twenty-three as Constitution Week and recommending that they be observed by the Commonwealth with appropriate exercises in the schools and otherwise so that the eventful day on which the Constitution of the United States was formally adopted may forever remain enshrined in the hearts and minds of all citizens and so that they may be reminded on that date annually of the blessings of liberty that they enjoy by the adoption of the United States Constitution, the Bill of Rights and all other amendments thereto.

1974, c. 531, § 2.1-24.1; 2001, c. 844.

§ 2.2-3315.1. White Cane Safety Day

Each year, the Governor may take suitable public notice of October 15 as White Cane Safety Day. He may issue a proclamation in which:

1. He comments upon the significance of the white cane;

2. He calls upon the citizens of the Commonwealth to observe the provisions of the White Cane Law and to take precautions necessary to the safety of the disabled;

3. He reminds the citizens of the Commonwealth of the policies with respect to the disabled herein declared and urges the citizens to cooperate in giving effect to them; and

4. He emphasizes the need of the citizens to be aware of the presence of disabled persons in the community and to keep safe and functional for the disabled the streets, highways, sidewalks, walkways, public buildings, public facilities, other public places, places of public accommodation, amusement and resort, and other places to which the public is invited, and to offer assistance to disabled persons upon appropriate occasions.

1972, c. 156, § 63.1-171.5; 2002, c. 747.

§ 2.2-3316. Landscape Architecture Week in Virginia

The second full week of April of each year shall be designated as Landscape Architecture Week in Virginia in recognition of the value and importance of the profession of landscape architecture, which encourages environmental stewardship, promotes energy conservation, enhances the preservation of the Commonwealth's historical heritage, and ensures that the place known as Virginia is preserved through wise design, management, and maintenance of its landscape.

1999, c. 164, § 2.1-27.11; 2001, c. 844.

§ 2.2-3317. Virginia Championship Applebutter Making Contest

The Virginia Championship Applebutter Making Contest, held in Winchester in conjunction with the Rotary Club's Apple Harvest Festival, shall be the third week in September of each year.

1983, c. 95, § 2.1-27.1; 2001, c. 844.

§ 2.2-3318. Virginia and American History Month

January nineteenth through February twenty-second, both inclusive of each year, shall be designated as Virginia and American History Month in special tribute to the founders, builders, and preservers of the Commonwealth and Nation.

1960, c. 354, § 2-22.4; 1966, c. 677, § 2.1-28; 2001, c. 844.

§ 2.2-3319. American Indian Month and Day of Appreciation

The month of November shall be designated as "American Indian Month" in Virginia, to honor the culture and heritage of the American Indian, to recognize the historic and continuing contribution of that heritage to American society, and in particular to commemorate the special place of the tribes native to Virginia in the life and history of the Commonwealth. Further, the Wednesday immediately preceding Thanksgiving of each year is designated a special Day of Appreciation for American Indians residing in the Commonwealth.

1987, c. 292, § 2.1-27.4; 1988, c. 685; 1996, c. 1020; 1997, c. 451; 2001, c. 844.

§ 2.2-3320. Month for Children in Virginia

The month of May shall be designated as the "Month for Children" in Virginia to focus on children's special contributions to family, school, and community; to counter the manifold ills that afflict children in the Commonwealth, the nation, and the world; and to encourage the citizens of Virginia to rededicate themselves and to redouble their efforts to improve the lives and ensure the futures of children everywhere.

1997, cc. 432, 442, § 2.1-27.9; 2001, c. 844.

§ 2.2-3321. Virginia Mushroom Festival

The Annual Front Royal and Warren County Mushroom Festival, in conjunction with the Appalachian Mushroom Growers Association's annual meeting, is designated as the Virginia Mushroom Festival, and shall be designated as the official state mushroom festival within the Commonwealth.

1987, c. 593, § 2.1-27.5; 2001, c. 844.

§ 2.2-3322. Office hours to be in accordance with executive orders of Governor

The offices of all state officers, departments, boards, bureaus, commissions, divisions and institutions in the executive branch of state government required by law to maintain regular business quarters at the seat of government shall be kept open for the transaction of public business in accordance with executive orders issued by the Governor.

This section shall not apply to the offices of the legislative and judicial departments of the state government.

Code 1950, § 2-23; 1966, c. 677, § 2.1-29; 2001, c. 844.

Chapter 34 - INTERPRETERS FOR THE DEAF IN AGENCY PROCEEDINGS

§ 2.2-3400. Definitions

As used in this chapter, unless the context requires a different meaning:

"Agency" means any state board, department, commission, agency or other unit of state government except a county, city, town or any agency thereof.

"Deaf person" means any person whose hearing is so seriously impaired as to prohibit the person from understanding oral communications spoken in a normal conversational tone.

1978, c. 602, § 2.1-570; 2001, c. 844.

§ 2.2-3401. Agency proceedings and determinations; application for licenses and services

A. In the case of any agency proceeding or determination as to whether there is a violation of law or regulation by a deaf person or whether such person may obtain or retain a license or other right or benefit, and when the agency or deaf person requests an interpreter for the deaf, the agency shall request the Virginia Department for the Deaf and Hard-of-Hearing to appoint a qualified interpreter or shall appoint such an interpreter from a list of qualified interpreters supplied by the Department to interpret the proceedings to the deaf person and to interpret any testimony the deaf person may give.

B. Whenever a deaf person applies for or receives any license, service, assistance or other right or benefit provided by an agency, the agency shall either request the Virginia Department for the Deaf and Hard-of-Hearing to appoint a qualified interpreter for the deaf or appoint such an interpreter from the list of qualified interpreters maintained by the Department to assist the deaf person in communicating with agency personnel.

1978, c. 602, §§ 2.1-571, 2.1-572; 2001, c. 844.

§ 2.2-3402. How interpreters paid

An interpreter for the deaf appointed pursuant to § 2.2-3401 shall be paid by the agency out of such state and federal funds as may be available for the purpose or, if the agency has insufficient funds to pay an interpreter, the Virginia Department for the Deaf and Hard-of-Hearing may appoint and pay an interpreter from the funds it may have available for the purpose.

1978, c. 602, § 2.1-573; 2001, c. 844.

Chapter 35 - INFORMATION TECHNOLOGY ACCESS ACT

§ 2.2-3500. Findings; policy

A. The General Assembly finds that (i) the advent of the information age throughout the United States and around the world has resulted in lasting changes in information technology; (ii) use of interactive visual display terminals by state and state-assisted organizations is becoming a widespread means of access for employees and the public to obtain information available

electronically, but nonvisual access, whether by speech, Braille, or other appropriate means has been overlooked in purchasing and deploying the latest information technology; (iii) presentation of electronic data solely in a visual format is a barrier to access by individuals who are blind or visually impaired, preventing them from participating on equal terms in crucial areas of life, such as education and employment; (iv) alternatives, including both software and hardware adaptations, have been created so that interactive control of computers and use of the information presented is possible by both visual and nonvisual means; and (v) the goals of the state in obtaining and deploying the most advanced forms of information technology properly include universal access so that the segments of society with particular needs (including individuals unable to use visual displays) will not be left out of the information age.

B. It is the policy of the Commonwealth that all covered entities shall conduct themselves in accordance with the following principles: (i) individuals who are blind or visually impaired have the right to full participation in the life of the Commonwealth, including the use of advanced technology that is provided by such covered entities for use by employees, program participants, and members of the general public, and (ii) technology purchased in whole or in part with funds provided by the Commonwealth to be used for the creation, storage, retrieval, or dissemination of information and intended for use by employees, program participants, and members of the general public shall be adaptable for access by individuals who are blind or visually impaired. The implementation of nonvisual access technology under this chapter shall be determined on a case-by-case basis as the need arises.

1999, cc. 769, 773, § 2.1-807; 2001, c. 844.

§ 2.2-3501. Definitions

As used in this chapter, unless the context requires a different meaning:

"Access" means the ability to receive, use, and manipulate data and operate controls included in information technology.

"Blind" or "visually impaired" individual means an individual who has: (i) a visual acuity of 20/200 or less in the better eye with correcting lenses or has a limited field of vision so that the widest diameter of the visual field subtends an angle no greater than 20 degrees; (ii) a medically indicated expectation of visual deterioration; or (iii) a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability.

"Covered entity" means all state agencies, public institutions of higher education, and political subdivisions of the Commonwealth.

"Information technology" means all electronic information processing hardware and software, including telecommunications.

"Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.

"Public broadcasting services" means the acquisition, production, and distribution by public broadcasting stations of noncommercial educational, instructional, informational, or cultural television and radio programs and information that may be transmitted by means of electronic communications, and related materials and services provided by such stations.

"Telecommunications" means the transmission of information, images, pictures, voice, or data by radio, video, or other electronic or impulse means, but does not include public broadcasting.

1999, cc. 769, 773, § 2.1-808; 2001, c. 844; 2012, cc. 803, 835; 2016, c. 296.

§ 2.2-3502. Assurance of nonvisual access

In general, the head of each covered entity shall ensure that information technology equipment and software used by blind or visually impaired employees, program participants, or members of the general public (i) provide access (including interactive use of the equipment and services) that is equivalent to that provided to individuals who are not blind or visually impaired; (ii) are designed to present information (including prompts used for interactive communications) in formats adaptable to both visual and nonvisual use; and (iii) have been purchased under a contract that includes the technology access clause required pursuant to § 2.2-3503.

1999, cc. 769, 773, § 2.1-809; 2001, c. 844.

§ 2.2-3503. Procurement requirements

A. The technology access clause specified in clause (iii) of § 2.2-3502 shall be developed by the Secretary of Technology and shall require compliance with the nonvisual access standards established in subsection B of this section. The clause shall be included in all future contracts for the procurement of information technology by, or for the use of, entities covered by this chapter on or after the effective date of this chapter.

B. At a minimum, the nonvisual access standards shall include the following: (i) the effective, interactive control and use of the technology (including the operating system), applications programs, and format of the data presented, shall be readily achievable by nonvisual means; (ii) the technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom the blind or visually impaired individual interacts; (iii) nonvisual access technology shall be integrated into networks used to share communications among employees, program participants, and the public; and (iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired. A covered entity may stipulate additional specifications in any procurement.

Compliance with the nonvisual access standards shall not be required if the head of a covered entity determines that (i) the information technology is not available with nonvisual access because the essential elements of the information technology are visual and (ii) nonvisual equivalence is not available.

1999, cc. 769, 773, § 2.1-810; 2001, c. 844.

§ 2.2-3504. Implementation

A. The head of any covered entity may, with respect to nonvisual access software or peripheral devices, approve the exclusion of the technology access clause only to the extent that the cost of the software or devices for the covered entity would increase the total cost of the procurement by more than five percent. All exclusions of the technology access clause from any contract shall be reported annually to the Secretary of Technology.

B. The acquisition and installation of hardware, software, or peripheral devices used for nonvisual access when the information technology is being used exclusively by individuals who are not blind or visually impaired shall not be required.

C. Notwithstanding the provisions of subsection B, the applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

1999, cc. 769, 773, § 2.1-811; 2001, c. 844.

Chapter 36 - STATE GOVERNMENT VOLUNTEERS ACT

§ 2.2-3600. Short title; declaration of legislative intent

A. This chapter may be cited as the Virginia State Government Volunteers Act.

B. Since the spirit of volunteerism has long animated generations of Americans to give of their time and abilities to help others, the Commonwealth would be wise to make use of volunteers in state service wherever practically possible. Effective use of volunteers in state service, however, requires that state agencies be provided guidelines for the development of volunteer programs and the utilization of volunteers. The General Assembly intends by this chapter to assure that people of Virginia may derive optimal benefit from volunteers, and that the time and talents of volunteers in state service may be put to their best use.

1977, c. 347, § 2.1-554; 2001, c. 844.

§ 2.2-3601. Definitions

As used in this chapter, unless the context requires a different meaning:

"Department" includes all departments established in the executive branch of state government and local agencies under the jurisdiction or supervision thereof, and for the purposes of §§ 2.2-3602, 2.2-3604 and 2.2-3605, shall include political subdivisions of the Commonwealth.

"Material donor" means any person who, without financial gain, provides funds, materials, employment, or opportunities for clients of agencies, instrumentalities, or political subdivisions of the Commonwealth;

"Occasional-service volunteer" means any person who provides a one-time or occasional voluntary service;

"Regular-service volunteer" means any person engaged in specific voluntary service activities on an ongoing or continuous basis;

"Volunteer" means any person who, of his own free will, provides goods or services, without any financial gain, to any agency, instrumentality or political subdivision of the Commonwealth;

"Volunteer in state and local services" shall include, but shall not be limited to, any person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT) while engaged in emergency services and preparedness activities as defined in § 44-146.16.

1977, c. 347, § 2.1-555; 1979, c. 131; 2001, c. 844; 2005, c. 474.

§ 2.2-3602. Scope of chapter; status of volunteers; reimbursements

A. Every department, through its executive head, may develop volunteer programs and accept the services of volunteers, including regular-service volunteers, occasional-service volunteers, or material donors, to assist in programs carried out or administered by that department.

B. Volunteers recruited, trained, or accepted by any department shall, to the extent of their voluntary service, be exempt from all provisions of law relating to state employment, hours of work, rate of compensation, leave time, and employee benefits except those enumerated in or consistent with § 2.2-3605. Volunteers shall, however, at all times comply with applicable work rules.

C. Every department utilizing the services of volunteers may provide volunteers with such incidental reimbursements as are consistent with the provisions of § 2.2-3605, including transportation costs, lodging, and subsistence, as the department deems appropriate to assist volunteers in performing their duties.

D. For the purposes of this chapter, individuals involved in emergency services and preparedness activities pursuant to the definition of "emergency services" in § 44-146.16 shall be considered volunteers in state and local services and shall be accordingly entitled to the benefits conferred in this chapter. As volunteers in state and local services, such individuals shall be deemed to be regular-service volunteers.

1977, c. 347, § 2.1-556; 2001, c. 844; 2005, c. 474.

§ 2.2-3603. Responsibilities of departments

Each department utilizing the services of volunteers shall:

1. Take actions necessary and appropriate to develop meaningful opportunities for volunteers involved in its programs and to improve public services;

2. Develop written rules governing the recruitment, screening, training, responsibility, utilization and supervision of volunteers;

3. Take actions necessary to ensure that volunteers and paid staff understand their respective duties and responsibilities, their relationship to each other, and their respective roles in fulfilling the objectives of their department;

4. Take actions necessary and appropriate to ensure a receptive climate for citizen volunteers;

5. Provide for the recognition of volunteers who have offered exceptional service to the Commonwealth; and

6. Recognize prior volunteer service as partial fulfillment of state employment requirements for training and experience established by the Department of Human Resource Management.

1977, c. 347, § 2.1-557; 1979, c. 107; 1991, c. 563; 2000, cc. 66, 657; 2001, c. 844.

§ 2.2-3604. Solicitation of aid from community

Each department may, through the officer, agent, or employee primarily responsible for the utilization of volunteers in that department, solicit volunteers and voluntary assistance for that department from the community.

1978, c. 121, § 2.1-557.1; 2001, c. 844.

§ 2.2-3605. Volunteer benefits

A. Meals may be furnished without charge to regular-service volunteers if scheduled work assignments extend over an established meal period. Meals may be furnished without charge to occasional-service volunteers at the discretion of the department's executive head.

B. Lodging, if available, may be furnished temporarily, at no charge, to regular-service volunteers.

C. Transportation reimbursement may be furnished those volunteers whose presence is determined to be necessary to the department. Rates or amounts of such reimbursement shall not exceed those provided in § 2.2-2823. Volunteers may utilize state vehicles in the performance of their duties, subject to those regulations governing use of state vehicles by paid staff.

D. Liability insurance may be provided by the department utilizing their services both to regular-service and occasional-service volunteers to the same extent as may be provided by the department to its paid staff. Volunteers in state and local service, including, but not limited to, any person who serves in a Medical Reserve Corps (MRC) unit or on a Community Emergency Response Team (CERT), shall enjoy the protection of the Commonwealth's sovereign immunity to the same extent as paid staff.

1977, c. 347, § 2.1-558; 1979, c. 131; 2001, c. 844; 2005, c. 474.

Part B - TRANSACTION OF PUBLIC BUSINESS

Chapter 37 - VIRGINIA FREEDOM OF INFORMATION ACT

§ 2.2-3700. Short title; policy

A. This chapter may be cited as "The Virginia Freedom of Information Act."

B. By enacting this chapter, the General Assembly ensures the people of the Commonwealth ready access to public records in the custody of a public body or its officers and employees, and free entry to meetings of public bodies wherein the business of the people is being conducted. The

affairs of government are not intended to be conducted in an atmosphere of secrecy since at all times the public is to be the beneficiary of any action taken at any level of government. Unless a public body or its officers or employees specifically elect to exercise an exemption provided by this chapter or any other statute, every meeting shall be open to the public and all public records shall be available for inspection and copying upon request. All public records and meetings shall be presumed open, unless an exemption is properly invoked.

The provisions of this chapter shall be liberally construed to promote an increased awareness by all persons of governmental activities and afford every opportunity to citizens to witness the operations of government. Any exemption from public access to records or meetings shall be narrowly construed and no record shall be withheld or meeting closed to the public unless specifically made exempt pursuant to this chapter or other specific provision of law. This chapter shall not be construed to discourage the free discussion by government officials or employees of public matters with the citizens of the Commonwealth.

All public bodies and their officers and employees shall make reasonable efforts to reach an agreement with a requester concerning the production of the records requested.

Any ordinance adopted by a local governing body that conflicts with the provisions of this chapter shall be void.

1968, c. 479, § 2.1-340; 1976, c. 467, § 2.1-340.1; 1989, c. 358; 1990, c. 538; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393.

§ 2.2-3701. Definitions

As used in this chapter, unless the context requires a different meaning:

"Closed meeting" means a meeting from which the public is excluded.

"Electronic communication" means any audio or combined audio and visual communication method.

"Emergency" means an unforeseen circumstance rendering the notice required by this chapter impossible or impracticable and which circumstance requires immediate action.

"Information" as used in the exclusions established by §§ 2.2-3705.1 through 2.2-3705.7, means the content within a public record that references a specifically identified subject matter, and shall not be interpreted to require the production of information that is not embodied in a public record.

"Meeting" or "meetings" means the meetings including work sessions, when sitting physically, or through telephonic or video equipment pursuant to § 2.2-3708 or 2.2-3708.1, as a body or entity, or as an informal assemblage of (i) as many as three members or (ii) a quorum, if less than three, of the constituent membership, wherever held, with or without minutes being taken, whether or not votes are cast, of any public body. Neither the gathering of employees of a public body nor the gathering or attendance of two or more members of a public body (i) at any place or function

where no part of the purpose of such gathering or attendance is the discussion or transaction of any public business, and such gathering or attendance was not called or prearranged with any purpose of discussing or transacting any business of the public body, or (ii) at a public forum, candidate appearance, or debate, the purpose of which is to inform the electorate and not to transact public business or to hold discussions relating to the transaction of public business, even though the performance of the members individually or collectively in the conduct of public business may be a topic of discussion or debate at such public meeting, shall be deemed a "meeting" subject to the provisions of this chapter.

"Open meeting" or "public meeting" means a meeting at which the public may be present.

"Public body" means any legislative body, authority, board, bureau, commission, district or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties, municipal councils, governing bodies of counties, school boards and planning commissions; boards of visitors of public institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. It shall include (i) the Virginia Birth-Related Neurological Injury Compensation Program and its board of directors established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 and (ii) any committee, subcommittee, or other entity however designated, of the public body created to perform delegated functions of the public body or to advise the public body. It shall not exclude any such committee, subcommittee or entity because it has private sector or citizen members. Corporations organized by the Virginia Retirement System are "public bodies" for purposes of this chapter.

For the purposes of the provisions of this chapter applicable to access to public records, constitutional officers and private police departments as defined in § 9.1-101 shall be considered public bodies and, except as otherwise expressly provided by law, shall have the same obligations to disclose public records as other custodians of public records.

"Public records" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostatting, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business. Records that are not prepared for or used in the transaction of public business are not public records.

"Regional public body" means a unit of government organized as provided by law within defined boundaries, as determined by the General Assembly, whose members are appointed by the participating local governing bodies, and such unit includes two or more counties or cities.

"Scholastic records" means those records containing information directly related to a student or an applicant for admission and maintained by a public body that is an educational agency or institution or by a person acting for such agency or institution.

1968, c. 479, § 2.1-341; 1970, c. 456; 1974, c. 332; 1975, c. 307; 1977, c. 677; 1978, cc. 573, 826; 1979, cc. 369, 687; 1980, c. 754; 1984, c. 252; 1989, c. 358; 1990, c. 538; 1993, cc. 270, 720; 1994, cc. 845, 931; 1996, c. 609; 1997, c. 641; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393; 2003, c. 897; 2007, c. 945; 2008, cc. 233, 789; 2010, c. 706; 2011, c. 242; 2015, cc. 131, 195, 224; 2016, cc. 620, 716.

§ 2.2-3702. Notice of chapter

Any person elected, reelected, appointed or reappointed to any body not excepted from this chapter shall (i) be furnished by the public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment or reappointment and (ii) read and become familiar with the provisions of this chapter.

1976, c. 467, § 2.1-341.1; 1999, cc. 703, 726; 2001, c. 844; 2002, c. 393.

§ 2.2-3703. Public bodies and records to which chapter inapplicable; voter registration and election records; access by persons incarcerated in a state, local, or federal correctional facility

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

1. The Virginia Parole Board, except that (i) information from the Virginia Parole Board providing the number of inmates considered by such Board for discretionary parole, the number of inmates granted or denied parole, and the number of parolees returned to the custody of the Department of Corrections solely as a result of a determination by such Board of a violation of parole shall be open to inspection and available for release, on a monthly basis, as provided by § 2.2-3704 and (ii) all records concerning the finances of the Virginia Parole Board shall be public records and subject to the provisions of this chapter. The information required by clause (i) shall be furnished by offense, sex, race, age of the inmate, and the locality in which the conviction was obtained, upon the request of the party seeking the information;

2. Petit juries and grand juries;

3. Family assessment and planning teams established pursuant to § 2.2-5207;

4. The Virginia State Crime Commission; and

5. The records required by law to be maintained by the clerks of the courts of record, as defined in § 1-212, and courts not of record, as defined in § 16.1-69.5. However, other records maintained by the clerks of such courts shall be public records and subject to the provisions of this chapter.

B. Public access to voter registration and election records shall be governed by the provisions of Title 24.2 and this chapter. The provisions of Title 24.2 shall be controlling in the event of any conflict.

C. No provision of this chapter or Chapter 21 (§ 30-178 et seq.) of Title 30 shall be construed to afford any rights to any person (i) incarcerated in a state, local or federal correctional facility, whether or not such facility is (a) located in the Commonwealth or (b) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.) or (ii) civilly committed pursuant to the Sexually Violent Predators Act (§ 37.2-900 et seq.). However, this subsection shall not be construed to prevent such persons from exercising their constitutionally protected rights, including, but not limited to, their right to call for evidence in their favor in a criminal prosecution.

1999, cc. 703, 726, § 2.1-341.2; 2001, c. 844; 2003, cc. 989, 1018; 2004, cc. 398, 690; 2007, cc. 438, 548, 626.

§ 2.2-3703.1. Disclosure pursuant to court order or subpoena

Nothing contained in this chapter shall have any bearing upon disclosures required to be made pursuant to any court order or subpoena. No discretionary exemption from mandatory disclosure shall be construed to make records covered by such discretionary exemption privileged under the rules of discovery, unless disclosure is otherwise prohibited by law.

2014, c. 319.

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc

A. Except as otherwise specifically provided by law, all public records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian may require the requester to provide his name and legal address. The custodian of such records shall take all necessary precautions for their preservation and safekeeping.

B. A request for public records shall identify the requested records with reasonable specificity. The request need not make reference to this chapter in order to invoke the provisions of this chapter or to impose the time limits for response by a public body. Any public body that is subject to this chapter and that is the custodian of the requested records shall promptly, but in all cases within five working days of receiving a request, provide the requested records to the requester or make one of the following responses in writing:

1. The requested records are being entirely withheld. Such response shall identify with reasonable particularity the volume and subject matter of withheld records, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

2. The requested records are being provided in part and are being withheld in part. Such response shall identify with reasonable particularity the subject matter of withheld portions, and cite, as to each category of withheld records, the specific Code section that authorizes the withholding of the records.

3. The requested records could not be found or do not exist. However, if the public body that received the request knows that another public body has the requested records, the response shall include contact information for the other public body.

4. It is not practically possible to provide the requested records or to determine whether they are available within the five-work-day period. Such response shall specify the conditions that make a response impossible. If the response is made within five working days, the public body shall have an additional seven work days in which to provide one of the four preceding responses.

C. Any public body may petition the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records or requires an extraordinarily lengthy search, and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with the petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

D. Subject to the provisions of subsection G, no public body shall be required to create a new record if the record does not already exist. However, a public body may abstract or summarize information under such terms and conditions as agreed between the requester and the public body.

E. Failure to respond to a request for records shall be deemed a denial of the request and shall constitute a violation of this chapter.

F. A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. The public body may also make a reasonable charge for the cost incurred in supplying records produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than 50 acres. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen.

G. Public records maintained by a public body in an electronic data processing system, computer database, or any other structured collection of data shall be made available to a requester at a reasonable cost, not to exceed the actual cost in accordance with subsection F. When electronic or other databases are combined or contain exempt and nonexempt records, the public body may provide access to the exempt records if not otherwise prohibited by law, but shall provide access to the nonexempt records as provided by this chapter.

Public bodies shall produce nonexempt records maintained in an electronic database in any tangible medium identified by the requester, including, where the public body has the capability, the option of posting the records on a website or delivering the records through an electronic mail address provided by the requester, if that medium is used by the public body in the regular course of business. No public body shall be required to produce records from an electronic database in a format not regularly used by the public body. However, the public body shall make reasonable efforts to provide records in any format under such terms and conditions as agreed between the requester and public body, including the payment of reasonable costs. The excision of exempt fields of information from a database or the conversion of data from one available format to another shall not be deemed the creation, preparation, or compilation of a new public record.

H. In any case where a public body determines in advance that charges for producing the requested records are likely to exceed $200, the public body may, before continuing to process the request, require the requester to agree to payment of a deposit not to exceed the amount of the advance determination. The deposit shall be credited toward the final cost of supplying the requested records. The period within which the public body shall respond under this section shall be tolled for the amount of time that elapses between notice of the advance determination and the response of the requester.

I. Before processing a request for records, a public body may require the requester to pay any amounts owed to the public body for previous requests for records that remain unpaid 30 days or more after billing.

J. In the event a public body has transferred possession of public records to any entity, including but not limited to any other public body, for storage, maintenance, or archiving, the public body initiating the transfer of such records shall remain the custodian of such records for purposes of responding to requests for public records made pursuant to this chapter and shall be responsible for retrieving and supplying such public records to the requester. In the event a public body has transferred public records for storage, maintenance, or archiving and such transferring public body is no longer in existence, any public body that is a successor to the transferring public body shall be deemed the custodian of such records. In the event no successor entity exists, the entity in possession of the public records shall be deemed the custodian of the records for purposes of compliance with this chapter, and shall retrieve and supply such records to the requester. Nothing in this subsection shall be construed to apply to records transferred to the Library of Virginia for permanent archiving pursuant to the duties imposed by the Virginia Public Records Act (§ 42.1-76 et seq.). In accordance with § 42.1-79, the Library of Virginia shall be the custodian of such permanently archived records and shall be responsible for responding to requests for such records made pursuant to this chapter.

1968, c. 479, § 2.1-342; 1973, c. 461; 1974, c. 332; 1975, cc. 307, 312; 1976, cc. 640, 709; 1977, c. 677; 1978, c. 810; 1979, cc. 682, 684, 686, 689; 1980, cc. 678, 754; 1981, cc. 456, 464, 466, 589; 1982, cc. 225, 449, 452, 560, 635; 1983, cc. 372, 462, 607; 1984, cc. 85, 395, 433, 513, 532;

1985, cc. 81, 155, 502, 618; 1986, cc. 273, 291, 383, 469, 592; 1987, cc. 401, 491, 581; 1988, cc. 39, 151, 395, 411, 891, 902; 1989, cc. 56, 358, 478; 1990, cc. 217, 538, 721, 819, 968; 1991, cc. 213, 561; 1992, cc. 40, 150, 167, 200, 203, 207, 593, 612; 1993, cc. 205, 270, 296, 537, 552, 638, 750, 883; 1994, cc. 485, 532, 606, 839, 853, 918; 1995, cc. 299, 362, 499, 562, 638, 722, 812, 837; 1996, cc. 168, 469, 589, 599, 783, 786, 794, 855, 862, 902, 905, 1001, 1046; 1997, cc. 198, 295, 439, 567, 636, 641, 777, 782, 785, 838, 861; 1998, cc. 427, 891; 1999, cc. 438, 703, 726; 2001, c. 844; 2002, cc. 715, 830; 2003, cc. 275, 981, 1021; 2007, c. 439; 2009, c. 626; 2010, c. 627; 2011, c. 604; 2016, cc. 620, 716.

§ 2.2-3704.01. Records containing both excluded and nonexcluded information; duty to redact

No provision of this chapter is intended, nor shall it be construed or applied, to authorize a public body to withhold a public record in its entirety on the grounds that some portion of the public record is excluded from disclosure by this chapter or by any other provision of law. A public record may be withheld from disclosure in its entirety only to the extent that an exclusion from disclosure under this chapter or other provision of law applies to the entire content of the public record. Otherwise, only those portions of the public record containing information subject to an exclusion under this chapter or other provision of law may be withheld, and all portions of the public record that are not so excluded shall be disclosed.

2016, cc. 620, 716.

§ 2.2-3704.1. Posting of notice of rights and responsibilities by state and local public bodies; assistance by the Freedom of Information Advisory Council

A. All state public bodies subject to the provisions of this chapter and any county or city, and any town with a population of more than 250, shall make available the following information to the public upon request and shall post a link to such information on the homepage of their respective public government websites:

1. A plain English explanation of the rights of a requester under this chapter, the procedures to obtain public records from the public body, and the responsibilities of the public body in complying with this chapter. For purposes of this section, "plain English" means written in nontechnical, readily understandable language using words of common everyday usage and avoiding legal terms and phrases or other terms and words of art whose usage or special meaning primarily is limited to a particular field or profession;

2. Contact information for the FOIA officer designated by the public body pursuant to § 2.2-3704.2 to (i) assist a requester in making a request for records or (ii) respond to requests for public records;

3. A general description, summary, list, or index of the types of public records maintained by such state public body;

4. A general description, summary, list, or index of any exemptions in law that permit or require such public records to be withheld from release;

5. Any policy the public body has concerning the type of public records it routinely withholds from release as permitted by this chapter or other law; and

6. The following statement: "A public body may make reasonable charges not to exceed its actual cost incurred in accessing, duplicating, supplying, or searching for the requested records. No public body shall impose any extraneous, intermediary, or surplus fees or expenses to recoup the general costs associated with creating or maintaining records or transacting the general business of the public body. Any duplicating fee charged by a public body shall not exceed the actual cost of duplication. All charges for the supplying of requested records shall be estimated in advance at the request of the citizen as set forth in subsection F of § 2.2-3704 of the Code of Virginia."

B. The Freedom of Information Advisory Council, created pursuant to § 30-178, shall assist in the development and implementation of the provisions of subsection A, upon request.

2004, c. 730; 2009, c. 626; 2014, c. 421; 2016, c. 748.

§ 2.2-3704.2. Public bodies to designate FOIA officer

A. All state public bodies, including state authorities, that are subject to the provisions of this chapter and all local public bodies that are subject to the provisions of this chapter, shall designate and publicly identify one or more Freedom of Information Act officers (FOIA officer) whose responsibility is to serve as a point of contact for members of the public in requesting public records and to coordinate the public body's compliance with the provisions of this chapter.

B. For such state public bodies, the name and contact information of the public body's FOIA officer to whom members of the public may direct requests for public records and who will oversee the public body's compliance with the provisions of this chapter shall be made available to the public upon request and be posted on the respective public body's website at the time of designation and maintained thereafter on such website for the duration of the designation.

C. For such local public bodies, the name and contact information of the public body's FOIA officer to whom members of the public may direct requests for public records and who will oversee the public body's compliance with the provisions of this chapter shall be made available in a way reasonably calculated to provide notice to the public, including posting at the public body's place of business, posting on its website, or including such information in its publications.

D. For the purposes of this section, local public bodies shall include constitutional officers.

E. Any such FOIA officer shall possess specific knowledge of the provisions of this chapter and be trained at least annually by legal counsel for the public body or the Virginia Freedom of Information Advisory Council.

2016, c. 748.

§ 2.2-3705. Repealed

Repealed by Acts 2004, c. 690.

§ 2.2-3705.1. Exclusions to application of chapter; exclusions of general application to public bodies

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Personnel information concerning identifiable individuals, except that access shall not be denied to the person who is the subject thereof. Any person who is the subject of such information and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such information shall be disclosed. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

2. Written advice of legal counsel to state, regional or local public bodies or the officers or employees of such public bodies, and any other information protected by the attorney-client privilege.

3. Legal memoranda and other work product compiled specifically for use in litigation or for use in an active administrative investigation concerning a matter that is properly the subject of a closed meeting under § 2.2-3711.

4. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by a public body.

As used in this subdivision, "test or examination" shall include (a) any scoring key for any such test or examination and (b) any other document that would jeopardize the security of the test or examination. Nothing contained in this subdivision shall prohibit the release of test scores or results as provided by law, or limit access to individual records as provided by law. However, the subject of such employment tests shall be entitled to review and inspect all records relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

5. Records recorded in or compiled exclusively for use in closed meetings lawfully held pursuant to § 2.2-3711. However, no record that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been reviewed or discussed in a closed meeting.

6. Vendor proprietary information software that may be in the public records of a public body. For the purpose of this subdivision, "vendor proprietary information software" means computer programs acquired from a vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.

7. Computer software developed by or for a state agency, state-supported institution of higher education or political subdivision of the Commonwealth.

8. Appraisals and cost estimates of real property subject to a proposed purchase, sale, or lease, prior to the completion of such purchase, sale, or lease.

9. Information concerning reserves established in specific claims administered by the Department of the Treasury through its Division of Risk Management as provided in Article 5 (§ 2.2-1832 et seq.) of Chapter 18, or by any county, city, or town; and investigative notes, correspondence and information furnished in confidence with respect to an investigation of a claim or a potential claim against a public body's insurance policy or self-insurance plan. However, nothing in this subdivision shall authorize the withholding of information taken from inactive reports upon expiration of the period of limitations for the filing of a civil suit.

10. Personal information, as defined in § 2.2-3801, including electronic mail addresses, furnished to a public body for the purpose of receiving electronic mail from the public body, provided that the electronic mail recipient has requested that the public body not disclose such information. However, access shall not be denied to the person who is the subject of the record.

11. Communications and materials required to be kept confidential pursuant to § 2.2-4119 of the Virginia Administrative Dispute Resolution Act (§ 2.2-4115 et seq.).

12. Information relating to the negotiation and award of a specific contract where competition or bargaining is involved and where the release of such information would adversely affect the bargaining position or negotiating strategy of the public body. Such information shall not be withheld after the public body has made a decision to award or not to award the contract. In the case of procurement transactions conducted pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.), the provisions of this subdivision shall not apply, and any release of information relating to such transactions shall be governed by the Virginia Public Procurement Act.

13. Account numbers or routing information for any credit card, debit card, or other account with a financial institution of any person or public body. However, access shall not be denied to the person who is the subject of the information. For the purposes of this subdivision, "financial institution" means any organization authorized to do business under state or federal laws relating to

financial institutions, including, without limitation, banks and trust companies, savings banks, savings and loan companies or associations, and credit unions.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, c. 690; 2010, c. 553; 2016, cc. 620, 716, 729.

§ 2.2-3705.2. Exclusions to application of chapter; records relating to public safety

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Confidential information, including victim identity, provided to or obtained by staff in a rape crisis center or a program for battered spouses.

2. Information contained in engineering and construction drawings and plans submitted for the sole purpose of complying with the Building Code in obtaining a building permit if disclosure of such information would identify specific trade secrets or other information that would be harmful to the competitive position of the owner or lessee. However, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

Information contained in engineering and construction drawings and plans that reveal critical structural components, security equipment and systems, ventilation systems, fire protection equipment, mandatory building emergency equipment or systems, elevators, electrical systems, telecommunications equipment and systems, and other utility equipment and systems submitted for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) if disclosure of such information would jeopardize the safety or security of any public or private commercial office, multifamily residential, or retail building or its occupants in the event of terrorism or other threat to public safety. In order for the information to be excluded from mandatory disclosure, the owner or lessee of such property, equipment, or system in writing shall (i) invoke the protections of this paragraph; (ii) identify the drawings, plans, or other materials to be protected; and (iii) state the reasons why protection is necessary.

Nothing in this subdivision shall authorize the withholding of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.

3. Information that describes the design, function, operation, or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

4. Information concerning the prevention or response to terrorist activity or cyber attacks, including (i) critical infrastructure information; (ii) vulnerability assessments, operational, procedural, transportation, and tactical planning or training manuals, and staff meeting minutes; (iii) engineering or architectural plans or drawings, or information derived from such plans or drawings; and (iv) information not lawfully available to the public regarding specific cybersecurity threats or vulnerabilities or security plans and measures of an entity, facility, building, structure, information technology system, or software program if disclosure of such information would (a) reveal the location or operation of security equipment and systems, elevators, ventilation, fire protection, emergency, electrical, telecommunications or utility equipment and systems of any public building, structure or information storage facility, or telecommunications or utility equipment or systems or (b) jeopardize the safety of any person.

The same categories of information concerning any person or entity submitted to a public body for the purpose of antiterrorism response planning or cybersecurity planning or protection may be withheld from disclosure if such person or entity in writing (1) invokes the protections of this subdivision, (2) identifies with specificity the information for which protection is sought, and (3) states with reasonable particularity why the protection of such information from public disclosure is necessary to meet the objective of antiterrorism, cybersecurity planning or protection, or critical infrastructure information security and resilience. Such statement shall be a public record and shall be disclosed upon request.

Any public body receiving a request for records excluded under this subdivision shall notify the Secretary of Public Safety and Homeland Security or his designee of such request and the response made by the public body in accordance with § 2.2-3704.

Nothing in this subdivision shall be construed to authorize the withholding of information relating to the structural or environmental soundness of any building, nor shall it authorize the withholding of information relating to any building in connection with an inquiry into the performance of that building after it has been subjected to fire, explosion, natural disaster, or other catastrophic event.

As used in this subdivision, "critical infrastructure information" means the same as that term is defined in 6 U.S.C. § 131.

5. Information that would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency, the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

6. Information contained in engineering and architectural drawings, operational, procedural, tactical planning or training manuals, or staff meeting minutes if disclosure of such information would (i) reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols or (ii) jeopardize the security of any governmental facility, building, or structure or the safety of persons using such facility, building, or structure.

7. Information concerning security plans and specific assessment components of school safety audits, as provided in § 22.1-279.8.

Nothing in this subdivision shall be construed to authorize the withholding of information relating to the effectiveness of security plans after (i) any school building or property has been subjected to fire, explosion, natural disaster, or other catastrophic event or (ii) any person on school property has suffered or been threatened with any personal injury.

8. Information concerning the mental health assessment of an individual subject to commitment as a sexually violent predator under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2 held by the Commitment Review Committee; except that in no case shall information identifying the victims of a sexually violent predator be disclosed.

9. Subscriber data provided directly or indirectly by a telecommunications carrier to a public body that operates a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system if the data is in a form not made available by the telecommunications carrier to the public generally. Nothing in this subdivision shall authorize the withholding of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

For the purposes of this subdivision, "subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier.

10. Subscriber data collected by a local governing body in accordance with the Enhanced Public Safety Telephone Services Act (§ 56-484.12 et seq.) and other identifying information of a personal, medical, or financial nature provided to a local governing body in connection with a 911 or E-911 emergency dispatch system or an emergency notification or reverse 911 system if such records are not otherwise publicly available.

Nothing in this subdivision shall authorize the withholding of subscriber data generated in connection with specific calls to a 911 emergency system, where the requester is seeking to obtain public records about the use of the system in response to a specific crime, emergency or other event as to which a citizen has initiated a 911 call.

For the purposes of this subdivision, "subscriber data" means the name, address, telephone number, and any other information identifying a subscriber of a telecommunications carrier.

11. Information held by the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, that would (i) reveal strategies under consideration or development by the Council or such commission or organizations to prevent the closure or realignment of federal military installations located in Virginia or the relocation of national security facilities located in Virginia, to limit the adverse economic effect of such realignment, closure, or relocation, or to seek additional tenant activity growth from the Department of Defense or federal government or (ii) disclose trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Council or such commission or organizations in connection with their work.

In order to invoke the trade secret protection provided by clause (ii), the submitting entity shall, in writing and at the time of submission (a) invoke this exclusion, (b) identify with specificity the information for which such protection is sought, and (c) state the reason why such protection is necessary. Nothing in this subdivision shall be construed to authorize the withholding of all or part of any record, other than a trade secret that has been specifically identified as required by this subdivision, after the Department of Defense or federal agency has issued a final, unappealable decision, or in the event of litigation, a court of competent jurisdiction has entered a final, unappealable order concerning the closure, realignment, or expansion of the military installation or tenant activities, or the relocation of the national security facility, for which records are sought.

12. Information, as determined by the State Comptroller, that describes the design, function, operation, or implementation of internal controls over the Commonwealth's financial processes and systems, and the assessment of risks and vulnerabilities of those controls, including the annual assessment of internal controls mandated by the State Comptroller, if disclosure of such information would jeopardize the security of the Commonwealth's financial assets. However, records relating to the investigation of and findings concerning the soundness of any fiscal process shall be disclosed in a form that does not compromise internal controls. Nothing in this subdivision shall be construed to prohibit the Auditor of Public Accounts or the Joint Legislative Audit and Review Commission from reporting internal control deficiencies discovered during the course of an audit.

13. Information relating to the Statewide Agencies Radio System (STARS) or any other similar local or regional public safety communications system that (i) describes the design, function, programming, operation, or access control features of the overall system, components, structures, individual networks, and subsystems of the STARS or any other similar local or regional communications system or (ii) relates to radio frequencies assigned to or utilized by STARS or any other similar local or regional communications system, code plugs, circuit routing, addressing schemes, talk groups, fleet maps, encryption, programming maintained by or utilized by STARS or

any other similar local or regional public safety communications system; those engineering and construction drawings and plans that reveal critical structural components, interconnectivity, security equipment and systems, network monitoring, network operation center, master sites, ventilation systems, fire protection equipment, mandatory building emergency equipment, electrical systems, and other utility equipment and systems related to STARS or any other similar local or regional public safety communications system; and special event plans, operational plans, storm plans, or other pre-arranged programming, if disclosure of such information would (a) reveal surveillance techniques, personnel deployments, alarm or security systems or technologies, or operational and transportation plans or protocols or (b) jeopardize the security of any governmental facility, building, or structure or the safety of any person.

14. Information concerning a salaried or volunteer Fire/EMS company or Fire/EMS department if disclosure of such information would reveal the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties.

15. Information concerning the disaster recovery plans or the evacuation plans in the event of fire, explosion, natural disaster, or other catastrophic event for hospitals and nursing homes regulated by the Board of Health pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 provided to the Department of Health. Nothing in this subdivision shall be construed to authorize the withholding of information relating to the effectiveness of executed evacuation plans after the occurrence of fire, explosion, natural disaster, or other catastrophic event.

16. (Effective until October 1, 2016) Records received by the Department of Criminal Justice Services pursuant to §§ 9.1-184, 22.1-79.4, and 22.1-279.8 or for purposes of evaluating threat assessment teams established by a public institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, to the extent such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components.

16. (Effective October 1, 2016) Records received by the Department of Criminal Justice Services pursuant to §§ 9.1-184, 22.1-79.4, and 22.1-279.8 or for purposes of evaluating threat assessment teams established by a public institution of higher education pursuant to § 23.1-805 or by a private nonprofit institution of higher education, to the extent such records reveal security plans, walk-through checklists, or vulnerability and threat assessment components.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 398, 482, 690, 770; 2005, c. 410; 2008, c. 721; 2009, c. 418; 2010, c. 672; 2011, cc. 111, 536; 2012, cc. 617, 803, 835; 2013, c. 600; 2015, c. 183; 2016, cc. 554, 620, 716, 717.

§ 2.2-3705.3. Exclusions to application of chapter; records relating to administrative investigations

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. (Effective until July 1, 2018) Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Alcoholic Beverage Control Board, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

1. (Effective July 1, 2018) Information relating to investigations of applicants for licenses and permits, and of all licensees and permittees, made by or submitted to the Virginia Alcoholic Beverage Control Authority, the Virginia Lottery, the Virginia Racing Commission, the Department of Agriculture and Consumer Services relating to investigations and applications pursuant to Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2, or the Private Security Services Unit of the Department of Criminal Justice Services.

2. Records of active investigations being conducted by the Department of Health Professions or by any health regulatory board in the Commonwealth pursuant to § 54.1-108.

3. Investigator notes, and other correspondence and information, furnished in confidence with respect to an active investigation of individual employment discrimination complaints made to the Department of Human Resource Management, to such personnel of any local public body, including local school boards, as are responsible for conducting such investigations in confidence, or to any public institution of higher education. Information contained in inactive reports shall be disclosed in a form that does not reveal the identity of charging parties, persons supplying the information, or other individuals involved in the investigation.

4. Records of active investigations being conducted by the Department of Medical Assistance Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.

5. Investigative notes and other correspondence and information furnished in confidence with respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice under the Virginia Human Rights Act (§ 2.2-3900 et seq.) or under any local ordinance adopted in accordance with the authority specified in § 2.2-524, or adopted pursuant to § 15.2-965, or adopted prior to July 1, 1987, in accordance with applicable law, relating to local human rights or human relations commissions. Information contained in inactive reports shall be disclosed in a form that does not reveal the identity of the parties involved or other persons supplying information.

6. Information relating to studies and investigations by the Virginia Lottery of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations that cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) the use of the lottery as a subterfuge for organized crime and illegal gambling where such information has not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv), and (v) shall be open to inspection and copying upon completion of the study or investigation.

7. Investigative notes, correspondence and information furnished in confidence, and records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for (i) the Auditor of Public Accounts; (ii) the Joint Legislative Audit and Review Commission; (iii) an appropriate authority as defined in § 2.2-3010 with respect to an allegation of wrongdoing or abuse under the Fraud and Abuse Whistle Blower Protection Act (§ 2.2-3009 et seq.); (iv) the Office of the State Inspector General with respect to an investigation initiated through the Fraud, Waste and Abuse Hotline or an investigation initiated pursuant to Chapter 3.2 (§ 2.2-307 et seq.); (v) internal auditors appointed by the head of a state agency or by any public institution of higher education; (vi) the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.2-825; or (vii) the auditors, appointed by the local governing body of any county, city, or town or a school board, who by charter, ordinance, or statute have responsibility for conducting an investigation of any officer, department, or program of such body. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of the complainants or persons supplying information to investigators. Unless disclosure is excluded by this subdivision, the information disclosed shall include the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person. Local governing bodies shall adopt guidelines to govern the disclosure required by this subdivision.

8. Information furnished in confidence to the Department of Human Resource Management with respect to an investigation, consultation, or mediation under § 2.2-1202.1, and memoranda, correspondence and other records resulting from any such investigation, consultation or mediation. Information contained in inactive reports shall be disclosed in a form that does not reveal the identity of the parties involved or other persons supplying information.

9. The names, addresses and telephone numbers of complainants furnished in confidence with respect to an investigation of individual zoning enforcement complaints or complaints relating to the Uniform Statewide Building Code (§ 36-97 et seq.) or the Statewide Fire Prevention Code (§ 27-94 et seq.) made to a local governing body.

10. Records of active investigations being conducted by the Department of Criminal Justice Services pursuant to Article 4 (§ 9.1-138 et seq.), Article 4.1 (§ 9.1-150.1 et seq.), Article 11 (§ 9.1-185 et seq.), and Article 12 (§ 9.1-186 et seq.) of Chapter 1 of Title 9.1.

11. Information furnished to or prepared by the Board of Education pursuant to subsection D of § 22.1-253.13:3 in connection with the review or investigation of any alleged breach in security, unauthorized alteration, or improper administration of tests by local school board employees responsible for the distribution or administration of the tests. However, this section shall not prohibit the disclosure of such information to (i) a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee or (ii) any requester, after the conclusion of a review or investigation, in a form that (a) does not reveal the identity of any person making a complaint or supplying information to the Board on a confidential basis and (b) does not compromise the security of any test mandated by the Board.

12. Information contained in (i) an application for licensure or renewal of a license for teachers and other school personnel, including transcripts or other documents submitted in support of an application, and (ii) an active investigation conducted by or for the Board of Education related to the denial, suspension, cancellation, revocation, or reinstatement of teacher and other school personnel licenses including investigator notes and other correspondence and information, furnished in confidence with respect to such investigation. However, this subdivision shall not prohibit the disclosure of such (a) application information to the applicant at his own expense or (b) investigation information to a local school board or division superintendent for the purpose of permitting such board or superintendent to consider or to take personnel action with regard to an employee. Information contained in completed investigations shall be disclosed in a form that does not reveal the identity of any complainant or person supplying information to investigators. The completed investigation information disclosed shall include information regarding the school or facility involved, the identity of the person who was the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. If an investigation fails to support a complaint or does not lead to corrective action, the identity of the person who was the subject of the complaint may be released only with the consent of the subject person. No personally identifiable information regarding a current or former student shall be released except as permitted by state or federal law.

13. Information provided in confidence and related to an investigation by the Attorney General under Article 1 (§ 3.2-4200 et seq.) or Article 3 (§ 3.2-4204 et seq.) of Chapter 42 of Title 3.2, Article 10 (§ 18.2-246.6 et seq.) of Chapter 6 or Chapter 13 (§ 18.2-512 et seq.) of Title 18.2, or Article 1 (§ 58.1-1000) of Chapter 10 of Title 58.1. However, information related to an investigation that has been inactive for more than six months shall, upon request, be disclosed provided such disclosure is not otherwise prohibited by law and does not reveal the identity of charging

parties, complainants, persons supplying information, witnesses, or other individuals involved in the investigation.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 605, 690, 766; 2005, c. 601; 2006, cc. 25, 95; 2008, cc. 387, 668, 689, 758; 2009, cc. 237, 326, 340; 2011, cc. 798, 871; 2012, cc. 476, 507, 803, 835; 2013, cc. 571, 572, 690, 717, 723; 2014, cc. 225, 414, 609, 788; 2015, cc. 38, 730; 2016, cc. 272, 620, 716.

§ 2.2-3705.4. Exclusions to application of chapter; educational records and certain records of educational institutions

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Scholastic records containing information concerning identifiable individuals, except that such access shall not be denied to the person who is the subject thereof, or the parent or legal guardian of the student. However, no student shall have access to (i) financial records of a parent or guardian or (ii) records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto, that are in the sole possession of the maker thereof and that are not accessible or revealed to any other person except a substitute.

The parent or legal guardian of a student may prohibit, by written request, the release of any individual information regarding that student until the student reaches the age of 18 years. For scholastic records of students under the age of 18 years, the right of access may be asserted only by his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For scholastic records of students who are emancipated or attending a state-supported institution of higher education, the right of access may be asserted by the student.

Any person who is the subject of any scholastic record and who is 18 years of age or older may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, such records shall be disclosed.

2. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment or promotion, or (iii) receipt of an honor or honorary recognition.

3. Information held by the Brown v. Board of Education Scholarship Awards Committee that would reveal personally identifiable information, including scholarship applications, personal financial information, and confidential correspondence and letters of recommendation.

4. Information of a proprietary nature produced or collected by or for faculty or staff of public institutions of higher education, other than the institutions' financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or a private concern, where such information has not been publicly released, published, copyrighted or patented.

5. Information held by the University of Virginia or the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, that contain proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would be harmful to the competitive position of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be.

6. (Effective until October 1, 2016) Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. However, information in a statistical or other form that does not identify individuals or provide personal information shall be disclosed and may be published by the Board. Individuals shall be provided access to their own personal information.

6. (Effective October 1, 2016) Personal information, as defined in § 2.2-3801, provided to the Board of the Virginia College Savings Plan or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1. However, information in a statistical or other form that does not identify individuals or provide personal information shall be disclosed and may be published by the Board. Individuals shall be provided access to their own personal information.

7. Information maintained in connection with fundraising activities by or for a public institution of higher education that would reveal (i) personal fundraising strategies relating to identifiable donors or prospective donors or (ii) wealth assessments; estate, financial, or tax planning information; health-related information; employment, familial, or marital status information; electronic mail addresses, facsimile or telephone numbers; birth dates or social security numbers of identifiable donors or prospective donors. Nothing in this subdivision, however, shall be construed to authorize the withholding of information relating to the amount, date, purpose, and terms of the pledge or donation, or the identity of the donor unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this

subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the institution for the performance of research services or other work or (ii) the terms and conditions of such grants or contracts.

8. (Effective until October 1, 2016) Information held by a threat assessment team established by a local school board pursuant to § 22.1-79.4 or by a public institution of higher education pursuant to § 23-9.2:10 relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, such information of the threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such information shall remove personally identifying information of any person who provided information to the threat assessment team under a promise of confidentiality.

8. (Effective October 1, 2016) Information held by a threat assessment team established by a local school board pursuant to § 22.1-79.4 or by a public institution of higher education pursuant to § 23.1-805 relating to the assessment or intervention with a specific individual. However, in the event an individual who has been under assessment commits an act, or is prosecuted for the commission of an act that has caused the death of, or caused serious bodily injury, including any felony sexual assault, to another person, such information of the threat assessment team concerning the individual under assessment shall be made available as provided by this chapter, with the exception of any criminal history records obtained pursuant to § 19.2-389 or 19.2-389.1, health records obtained pursuant to § 32.1-127.1:03, or scholastic records as defined in § 22.1-289. The public body providing such information shall remove personally identifying information of any person who provided information to the threat assessment team under a promise of confidentiality.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, c. 690; 2006, c. 518; 2008, cc. 561, 665; 2010, cc. 456, 524; 2014, c. 313; 2016, cc. 554, 620, 716.

§ 2.2-3705.5. Exclusions to application of chapter; health and social services records

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Health records, except that such records may be personally reviewed by the individual who is the subject of such records, as provided in subsection F of § 32.1-127.1:03.

Where the person who is the subject of health records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the health records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Health records shall only be reviewed and shall not be copied by such administrator or chief medical officer. The information in the health records of a person so confined shall continue to be confidential and shall not be disclosed by the administrator or chief medical officer of the facility to any person except the subject or except as provided by law.

Where the person who is the subject of health records is under the age of 18, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated, a court of competent jurisdiction has restricted or denied such access, or a parent has been denied access to the health record in accordance with § 20-124.6. In instances where the person who is the subject thereof is an emancipated minor, a student in a public institution of higher education, or is a minor who has consented to his own treatment as authorized by § 16.1-338 or 54.1-2969, the right of access may be asserted by the subject person.

For the purposes of this chapter, statistical summaries of incidents and statistical data concerning abuse of individuals receiving services compiled by the Commissioner of Behavioral Health and Developmental Services shall be disclosed. No such summaries or data shall include any information that identifies specific individuals receiving services.

2. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of Health Professions or in the offices of any health regulatory board, whichever may possess the material.

3. Reports, documentary evidence and other information as specified in §§ 51.5-122, 51.5-141, and 63.2-104.

4. Investigative notes; proprietary information not published, copyrighted or patented; information obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 17 (§ 63.2-1700 et seq.) and 18 (§ 63.2-1800 et seq.) of Title 63.2; and information furnished to the Office of the Attorney General in connection with an

investigation or litigation pursuant to Article 19.1 (§ 8.01-216.1 et seq.) of Chapter 3 of Title 8.01 and Chapter 9 (§ 32.1-310 et seq.) of Title 32.1. Information from the records of completed investigations shall be disclosed in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

5. Information collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

6. Reports and court documents relating to involuntary admission required to be kept confidential pursuant to § 37.2-818.

7. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or the expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

8. Information required to be provided to the Department of Health Professions by certain licensees pursuant to § 54.1-2506.1.

9. Information acquired (i) during a review of any child death conducted by the State Child Fatality Review team established pursuant to § 32.1-283.1 or by a local or regional child fatality review team to the extent that such information is made confidential by § 32.1-283.2; (ii) during a review of any death conducted by a family violence fatality review team to the extent that such information is made confidential by § 32.1-283.3; or (iii) during a review of any adult death conducted by the Adult Fatality Review Team to the extent made confidential by § 32.1-283.5 or by a local or regional adult fatality review team to the extent that such information is made confidential by § 32.1-283.6.

10. Patient level data collected by the Board of Health and not yet processed, verified, and released, pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of Health has contracted pursuant to § 32.1-276.4.

11. Information held by the Health Practitioners' Monitoring Program Committee within the Department of Health Professions that may identify any practitioner who may be, or who is actually, impaired and disclosure of such information is prohibited by § 54.1-2517.

12. Information relating to a grant application, or accompanying a grant application, submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5 that would (i) reveal (a) medical or mental health records or other data identifying individual patients or (b) proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

13. Any information copied, recorded, or received by the Commissioner of Health in the course of an examination, investigation, or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

14. Information and statistical registries required to be kept confidential pursuant to §§ 63.2-102 and 63.2-104.

15. Information relating to the prescribing and dispensing of covered substances to recipients and any abstracts from such information that are in the possession of the Prescription Monitoring Program pursuant to Chapter 25.2 (§ 54.1-2519 et seq.) of Title 54.1 and any material relating to the operation or security of the Program.

16. Records of the Virginia Birth-Related Neurological Injury Compensation Program required to be kept confidential pursuant to § 38.2-5002.2.

17. Information held by the State Health Commissioner relating to the health of any person subject to an order of quarantine or an order of isolation pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of Chapter 2 of Title 32.1. However, nothing in this subdivision shall be construed to authorize the withholding of statistical summaries, abstracts, or other information in aggregate form.

18. The names and addresses or other contact information of persons receiving transportation services from a state or local public body or its designee under Title II of the Americans with Disabilities Act, (42 U.S.C. § 12131 et seq.) or funded by Temporary Assistance for Needy Families (TANF) created under § 63.2-600.

19. Information held by certain health care committees and entities that may be withheld from discovery as privileged communications pursuant to § 8.01-581.17.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 65, 666, 690, 773, 1014, 1021; 2005, cc. 181, 227, 716; 2008, c. 539; 2009, cc. 472, 813, 840; 2011, cc. 110, 175, 535; 2012, cc. 476, 479, 507, 803, 835; 2015, cc. 22, 108, 127; 2016, cc. 620, 716.

§ 2.2-3705.6. Exclusions to application of chapter; proprietary records and trade secrets

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. Proprietary information gathered by or for the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1.

2. Financial statements not publicly available filed with applications for industrial development financings in accordance with Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2.

3. Proprietary information, voluntarily provided by private business pursuant to a promise of confidentiality from a public body, used by the public body for business, trade, and tourism development or retention; and memoranda, working papers, or other information related to businesses that are considering locating or expanding in Virginia, prepared by a public body, where competition or bargaining is involved and where disclosure of such information would adversely affect the financial interest of the public body.

4. Information that was filed as confidential under the Toxic Substances Information Act (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.

5. Fisheries data that would permit identification of any person or vessel, except when required by court order as specified in § 28.2-204.

6. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration.

7. Proprietary information related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy contingency planning purposes or for developing consolidated statistical information on energy supplies.

8. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

9. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Transportation Equity Act for the 21st Century (P.L. 105-178) for transportation projects if disclosure of such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Surface Transportation Board or the Federal Railroad Administration with respect to data provided in confidence to the Surface Transportation Board and the Federal Railroad Administration. However, the exclusion provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

10. Confidential information designated as provided in subsection F of § 2.2-4342 as trade secrets or proprietary information by any person in connection with a procurement transaction or by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 2.2-4317.

11. a. Memoranda, staff evaluations, or other information prepared by the responsible public entity, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where (i) if such information was made public prior to or after the execution of an interim or a comprehensive agreement, § 33.2-1820 or 56-575.17 notwithstanding, the financial interest or bargaining position of the public entity would be adversely affected and (ii) the basis for the determination required in clause (i) is documented in writing by the responsible public entity; and

b. Information provided by a private entity to a responsible public entity, affected jurisdiction, or affected local jurisdiction pursuant to the provisions of the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) if disclosure of such information would reveal (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if such information was made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the public or private entity would be adversely affected. In order for the information specified in clauses (i), (ii), and (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the responsible public entity:

(1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The responsible public entity shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. To protect other information submitted by the private entity from disclosure, the responsible public entity shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the public or private entity. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. Once a written determination is made by the responsible public entity, the information

afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of any affected jurisdiction or affected local jurisdiction.

Except as specifically provided in subdivision 11 a, nothing in this subdivision shall be construed to authorize the withholding of (a) procurement records as required by § 33.2-1820 or 56-575.17; (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the responsible public entity and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

For the purposes of this subdivision, the terms "affected jurisdiction, " "affected local jurisdiction, " "comprehensive agreement, " "interim agreement, " "qualifying project, " "qualifying transportation facility, " "responsible public entity, " and "private entity" shall mean the same as those terms are defined in the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

12. Confidential proprietary information or trade secrets, not publicly available, provided by a private person or entity pursuant to a promise of confidentiality to the Virginia Resources Authority or to a fund administered in connection with financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such information were made public, the financial interest of the private person or entity would be adversely affected.

13. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), or confidential proprietary information that is not generally available to the public through regulatory disclosure or otherwise, provided by a (i) bidder or applicant for a franchise or (ii) franchisee under Chapter 21 (§ 15.2-2100 et seq.) of Title 15.2 to the applicable franchising authority pursuant to a promise of confidentiality from the franchising authority, to the extent the information relates to the bidder's, applicant's, or franchisee's financial capacity or provision of new services, adoption of new technologies or implementation of improvements, where such new services, technologies, or improvements have not been implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such information were made public, the competitive advantage or financial interests of the franchisee would be adversely affected.

In order for trade secrets or confidential proprietary information to be excluded from the provisions of this chapter, the bidder, applicant, or franchisee shall (a) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (b) identify the data or other materials for which protection is sought, and (c) state the reason why protection is necessary.

No bidder, applicant, or franchisee may invoke the exclusion provided by this subdivision if the bidder, applicant, or franchisee is owned or controlled by a public body or if any representative of

the applicable franchising authority serves on the management board or as an officer of the bidder, applicant, or franchisee.

14. Information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Department of Agriculture and Consumer Services pursuant to subsection E of § 18.2-340.34.

15. Information related to Virginia apple producer sales provided to the Virginia StateApple Board pursuant to § 3.2-1215.

16. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) of Title 59.1, submitted by CMRS providers as defined in § 56-484.12 to the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, relating to the provision of wireless E-911 service.

17. (Effective until October 1, 2016) Information relating to a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 22 (§ 23-277 et seq.) of Title 23 if disclosure of such information would (i) reveal proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

17. (Effective October 1, 2016) Information relating to a grant or loan application, or accompanying a grant or loan application, to the Innovation and Entrepreneurship Investment Authority pursuant to Article 3 (§ 2.2-2233.1 et seq.) of Chapter 22 of Title 2.2 or to the Commonwealth Health Research Board pursuant to Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 if disclosure of such information would (i) reveal proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant.

18. Confidential proprietary information and trade secrets developed and held by a local public body (i) providing telecommunication services pursuant to § 56-265.4:4 and (ii) providing cable television services pursuant to Article 1.1 (§ 15.2-2108.2 et seq.) of Chapter 21 of Title 15.2 if disclosure of such information would be harmful to the competitive position of the locality.

In order for confidential proprietary information or trade secrets to be excluded from the provisions of this chapter, the locality in writing shall (a) invoke the protections of this subdivision, (b) identify with specificity the information for which protection is sought, and (c) state the reasons why protection is necessary. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

19. Confidential proprietary information and trade secrets developed by or for a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) to provide qualifying communications services as authorized by Article 5.1 (§ 56-484.7:1 et seq.) of Chapter 15 of Title 56, where disclosure of such information would be harmful to the competitive position of the authority, except that information required to be maintained in accordance with § 15.2-2160 shall be released.

20. Trade secrets as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or financial information of a business, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, provided to the Department of Small Business and Supplier Diversity as part of an application for certification as a small, women-owned, or minority-owned business in accordance with Chapter 16.1 (§ 2.2-1603 et seq.). In order for such trade secrets or financial information to be excluded from the provisions of this chapter, the business shall (i) invoke such exclusion upon submission of the data or other materials for which protection from disclosure is sought, (ii) identify the data or other materials for which protection is sought, and (iii) state the reasons why protection is necessary.

21. Information of a proprietary or confidential nature disclosed by a carrier to the State Health Commissioner pursuant to §§ 32.1-276.5:1 and 32.1-276.7:1.

22. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), including, but not limited to, financial information, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, and revenue and cost projections supplied by a private or nongovernmental entity to the State Inspector General for the purpose of an audit, special investigation, or any study requested by the Office of the State Inspector General in accordance with law.

In order for the information specified in this subdivision to be excluded from the provisions of this chapter, the private or nongovernmental entity shall make a written request to the State Inspector General:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

b. Identifying with specificity the data or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

The State Inspector General shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. The State Inspector General shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

23. Information relating to a grant application, or accompanying a grant application, submitted to the Tobacco Region Revitalization Commission that would (i) reveal (a) trade secrets as defined in

the Uniform Trade Secrets Act (§ 59.1-336 et seq.), (b) financial information of a grant applicant that is not a public body, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise, or (c) research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, and (ii) be harmful to the competitive position of the applicant; and memoranda, staff evaluations, or other information prepared by the Commission or its staff exclusively for the evaluation of grant applications. The exclusion provided by this subdivision shall apply to grants that are consistent with the powers of and in furtherance of the performance of the duties of the Commission pursuant to § 3.2-3103.

In order for the information specified in this subdivision to be excluded from the provisions of this chapter, the applicant shall make a written request to the Commission:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

b. Identifying with specificity the data, information or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

The Commission shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets, financial information, or research-related information of the applicant. The Commission shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

24. a. Information held by the Commercial Space Flight Authority relating to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority if disclosure of such information would adversely affect the financial interest or bargaining position of the Authority or a private entity providing the information to the Authority; or

b. Information provided by a private entity to the Commercial Space Flight Authority if disclosure of such information would (i) reveal (a) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.); (b) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (c) other information submitted by the private entity and (ii) adversely affect the financial interest or bargaining position of the Authority or private entity.

In order for the information specified in clauses (a), (b), and (c) of subdivision 24 b to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

(1) Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. To protect other information submitted by the private entity from disclosure, the Authority shall determine whether public disclosure would adversely affect the financial interest or bargaining position of the Authority or private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

25. Information of a proprietary nature furnished by an agricultural landowner or operator to the Department of Conservation and Recreation, the Department of Environmental Quality, the Department of Agriculture and Consumer Services, or any political subdivision, agency, or board of the Commonwealth pursuant to §§ 10.1-104.7, 10.1-104.8, and 10.1-104.9, other than when required as part of a state or federal regulatory enforcement action.

26. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided to the Department of Environmental Quality pursuant to the provisions of § 10.1-1458. In order for such trade secrets to be excluded from the provisions of this chapter, the submitting party shall (i) invoke this exclusion upon submission of the data or materials for which protection from disclosure is sought, (ii) identify the data or materials for which protection is sought, and (iii) state the reasons why protection is necessary.

27. Information of a proprietary nature furnished by a licensed public-use airport to the Department of Aviation for funding from programs administered by the Department of Aviation or the Virginia Aviation Board, where if such information was made public, the financial interest of the public-use airport would be adversely affected.

In order for the information specified in this subdivision to be excluded from the provisions of this chapter, the public-use airport shall make a written request to the Department of Aviation:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

b. Identifying with specificity the data or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

28. (Effective until October 1, 2016) Records submitted as a grant or loan application, or accompanying a grant or loan application, for an award from the Virginia Research Investment Fund pursuant to Chapter 28 (§ 23-304 et seq.) of Title 23, to the extent that such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published,

copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

28. (Effective October 1, 2016) Records submitted as a grant or loan application, or accompanying a grant or loan application, for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1, to the extent that such records contain proprietary business or research-related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical, technological, or scholarly issues, when such information has not been publicly released, published, copyrighted, or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 593, 690; 2005, cc. 258, 411; 2006, cc. 73, 76, 467, 831, 921, 936; 2006, Sp. Sess. I, c. 1; 2007, cc. 374, 693; 2008, cc. 71, 102, 266, 387, 633, 689, 736, 743; 2009, cc. 246, 311, 325, 765, 810, 869; 2010, cc. 310, 808; 2011, cc. 541, 781, 798, 871; 2012, cc. 693, 709; 2013, cc. 54, 482, 574; 2015, cc. 696, 697; 2016, cc. 620, 716, 724, 725, 775.

§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and certain other limited exclusions

The following information contained in a public record is excluded from the mandatory disclosure provisions of this chapter but may be disclosed by the custodian in his discretion, except where such disclosure is prohibited by law. Redaction of information excluded under this section from a public record shall be conducted in accordance with § 2.2-3704.01.

1. State income, business, and estate tax returns, personal property tax returns, and confidential records held pursuant to § 58.1-3.

2. Working papers and correspondence of the Office of the Governor; the Lieutenant Governor; the Attorney General; the members of the General Assembly, the Division of Legislative Services, or the Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any political subdivision of the Commonwealth; or the president or other chief executive officer of any public institution of higher education in Virginia. However, no information that is otherwise open to inspection under this chapter shall be deemed excluded by virtue of the fact that it has been attached to or incorporated within any working paper or correspondence. Nothing in this subdivision shall be construed to authorize the withholding of any resumes or applications submitted by persons who are appointed by the Governor pursuant to § 2.2-106 or 2.2-107.

As used in this subdivision:

"Members of the General Assembly" means each member of the Senate of Virginia and the House of Delegates and their legislative aides when working on behalf of such member.

"Office of the Governor" means the Governor; his chief of staff, counsel, director of policy, Cabinet Secretaries, and Assistant to the Governor for Intergovernmental Affairs and those individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

"Working papers" means those records prepared by or for an above-named public official for his personal or deliberative use.

3. Information contained in library records that can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

4. Contract cost estimates prepared for the confidential use of the Department of Transportation in awarding contracts for construction or the purchase of goods or services, and records and automated systems prepared for the Department's Bid Analysis and Monitoring Program.

5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth, whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by the political subdivision.

6. Information furnished by a member of the General Assembly to a meeting of a standing committee, special committee, or subcommittee of his house established solely for the purpose of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of formulating advisory opinions to members on standards of conduct, or both.

7. Customer account information of a public utility affiliated with a political subdivision of the Commonwealth, including the customer's name and service address, but excluding the amount of utility service provided and the amount of money paid for such utility service.

8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or any other local government agency concerning persons who have applied for occupancy or who have occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access to one's own information shall not be denied.

9. Information regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of such information would have a detrimental effect upon the negotiating pos-

ition of a governing body or on the establishment of the terms, conditions, and provisions of the siting agreement.

10. Information on the site-specific location of rare, threatened, endangered, or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body that has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exclusion shall not apply to requests from the owner of the land upon which the resource is located.

11. Memoranda, graphics, video or audio tapes, production models, data, and information of a proprietary nature produced by or for or collected by or for the Virginia Lottery relating to matters of a specific lottery game design, development, production, operation, ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such information not been publicly released, published, copyrighted, or patented. Whether released, published, or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

12. (Effective until October 1, 2016) Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local retirement system, acting pursuant to § 51.1-803, or the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or the Virginia College Savings Plan, acting pursuant to § 23-38.77, relating to the acquisition, holding, or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, if disclosure of such information would (i) reveal confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality of the future value of such ownership interest or the future financial performance of the entity and (ii) have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to authorize the withholding of information relating to the identity of any investment held, the amount invested, or the present value of such investment.

12. (Effective October 1, 2016) Information held by the Virginia Retirement System, acting pursuant to § 51.1-124.30, or a local retirement system, acting pursuant to § 51.1-803, or the Rector and Visitors of the University of Virginia, acting pursuant to § 23.1-2210, or the Virginia College Savings Plan, acting pursuant to § 23.1-704, relating to the acquisition, holding, or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, if disclosure of such information

would (i) reveal confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality of the future value of such ownership interest or the future financial performance of the entity and (ii) have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to authorize the withholding of information relating to the identity of any investment held, the amount invested, or the present value of such investment.

13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

14. Financial, medical, rehabilitative, and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

15. Information held by the Virginia Commonwealth University Health System Authority pertaining to any of the following: an individual's qualifications for or continued membership on its medical or teaching staffs; proprietary information gathered by or in the possession of the Authority from third parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in awarding contracts for construction or the purchase of goods or services; information of a proprietary nature produced or collected by or for the Authority or members of its medical or teaching staffs; financial statements not publicly available that may be filed with the Authority from third parties; the identity, accounts, or account status of any customer of the Authority; consulting or other reports paid for by the Authority to assist the Authority in connection with its strategic planning and goals; the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority; and information of a proprietary nature produced or collected by or for employees of the Authority, other than the Authority's financial or administrative records, in the conduct of or as a result of study or research on medical, scientific, technical, or scholarly issues, whether sponsored by the Authority alone or in conjunction with a governmental body or a private concern, when such information has not been publicly released, published, copyrighted, or patented. This exclusion shall also apply when such information is in the possession of Virginia Commonwealth University.

16. Information held by the Department of Environmental Quality, the State Water Control Board, the State Air Pollution Control Board, or the Virginia Waste Management Board relating to (i) active federal environmental enforcement actions that are considered confidential under federal law and (ii) enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such information shall be disclosed after a proposed sanction resulting from the

investigation has been proposed to the director of the agency. This subdivision shall not be construed to authorize the withholding of information related to inspection reports, notices of violation, and documents detailing the nature of any environmental contamination that may have occurred or similar documents.

17. Information related to the operation of toll facilities that identifies an individual, vehicle, or travel itinerary, including vehicle identification data or vehicle enforcement system information; video or photographic images; Social Security or other identification numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone numbers; or records of the date or time of toll facility use.

18. Information held by the Virginia Lottery pertaining to (i) the social security number, tax identification number, state sales tax number, home address and telephone number, personal and lottery banking account and transit numbers of a retailer, and financial information regarding the nonlottery operations of specific retail locations and (ii) individual lottery winners, except that a winner's name, hometown, and amount won shall be disclosed.

19. Information held by the Board for Branch Pilots relating to the chemical or drug testing of a person regulated by the Board, where such person has tested negative or has not been the subject of a disciplinary action by the Board for a positive test result.

20. Information pertaining to the planning, scheduling, and performance of examinations of holder records pursuant to the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer or his agents or employees or persons employed to perform an audit or examination of holder records.

21. Information held by the Virginia Department of Emergency Management or a local governing body relating to citizen emergency response teams established pursuant to an ordinance of a local governing body that reveal the name, address, including e-mail address, telephone or pager numbers, or operating schedule of an individual participant in the program.

22. Information held by state or local park and recreation departments and local and regional park authorities concerning identifiable individuals under the age of 18 years. However, nothing in this subdivision shall operate to authorize the withholding of information defined as directory information under regulations implementing the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out requirements provided by such regulations. Access shall not be denied to the parent, including a noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. For such information of persons who are emancipated, the right of access may be asserted by the subject thereof. Any parent or emancipated person who is the subject of the information may waive, in writing, the protections afforded by this subdivision. If the protections are so waived, the public body shall open such information for inspection and copying.

23. Information submitted for inclusion in the Statewide Alert Network administered by the Department of Emergency Management that reveal names, physical addresses, email addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless or portable communications device information, or operating schedules of individuals or agencies, where the release of such information would compromise the security of the Statewide Alert Network or individuals participating in the Statewide Alert Network.

24. Information held by the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

25. (Effective until October 1, 2016) Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement system), or the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, if disclosure of such information would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

25. (Effective October 1, 2016) Information held by the Virginia Retirement System acting pursuant to § 51.1-124.30, a local retirement system acting pursuant to § 51.1-803 (hereinafter col-

lectively referred to as the retirement system), or the Virginia College Savings Plan, acting pursuant to § 23.1-704 relating to:

a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings Plan on the pursuit of particular investment strategies, or the selection or termination of investment managers, prior to the execution of such investment strategies or the selection or termination of such managers, if disclosure of such information would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan; and

b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a private entity to the retirement system or the Virginia College Savings Plan if disclosure of such records would have an adverse impact on the financial interest of the retirement system or the Virginia College Savings Plan.

For the records specified in subdivision b to be excluded from the provisions of this chapter, the entity shall make a written request to the retirement system or the Virginia College Savings Plan:

(1) Invoking such exclusion prior to or upon submission of the data or other materials for which protection from disclosure is sought;

(2) Identifying with specificity the data or other materials for which protection is sought; and

(3) Stating the reasons why protection is necessary.

The retirement system or the Virginia College Savings Plan shall determine whether the requested exclusion from disclosure meets the requirements set forth in subdivision b.

Nothing in this subdivision shall be construed to authorize the withholding of the identity or amount of any investment held or the present value and performance of all asset classes and subclasses.

26. Information held by the Department of Corrections made confidential by § 53.1-233.

27. Information maintained by the Department of the Treasury or participants in the Local Government Investment Pool (§ 2.2-4600 et seq.) and required to be provided by such participants to the Department to establish accounts in accordance with § 2.2-4602.

28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care Centers, except that access shall not be denied to the person who is the subject of the information.

29. Information maintained in connection with fundraising activities by the Veterans Services Foundation pursuant to § 2.2-2716 that reveal the address, electronic mail address, facsimile or telephone number, social security number or other identification number appearing on a driver's license, or credit card or bank account data of identifiable donors, except that access shall not be denied to the person who is the subject of the information. Nothing in this subdivision, however,

shall be construed to authorize the withholding of information relating to the amount, date, purpose, and terms of the pledge or donation or the identity of the donor, unless the donor has requested anonymity in connection with or as a condition of making a pledge or donation. The exclusion provided by this subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or contracting with the foundation for the performance of services or other work or (ii) the terms and conditions of such grants or contracts.

30. Names, physical addresses, telephone numbers, and email addresses contained in correspondence between an individual and a member of the governing body, school board, or other public body of the locality in which the individual is a resident, unless the correspondence relates to the transaction of public business. However, no information that is otherwise open to inspection under this chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within any such correspondence.

31. Information prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state prosecutors or law-enforcement personnel, where such information is not otherwise available to the public and the disclosure of such information would reveal confidential strategies, methods, or procedures to be employed in law-enforcement activities or materials created for the investigation and prosecution of a criminal case.

32. Information provided to the Department of Aviation by other entities of the Commonwealth in connection with the operation of aircraft where the information would not be subject to disclosure by the entity providing the information. The entity providing the information to the Department of Aviation shall identify the specific information to be protected and the applicable provision of this chapter that excludes the information from mandatory disclosure.

33. Information created or maintained by or on the behalf of the judicial performance evaluation program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

34. (Effective July 1, 2018) Information held by the Virginia Alcoholic Beverage Control Authority that contains (i) information of a proprietary nature gathered by or in the possession of the Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), of any private entity; (iii) financial information of a private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a) confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the determination of marketing and operational strategies where disclosure of such strategies would be harmful to the competitive position of the Authority.

In order for the information identified in clauses (i), (ii), or (iii) to be excluded from the provisions of this chapter, the private entity shall make a written request to the Authority:

a. Invoking such exclusion upon submission of the data or other materials for which protection from disclosure is sought;

b. Identifying with specificity the data or other materials for which protection is sought; and

c. Stating the reasons why protection is necessary.

The Authority shall determine whether the requested exclusion from disclosure is necessary to protect such information of the private entity. The Authority shall make a written determination of the nature and scope of the protection to be afforded by it under this subdivision.

35. Information reflecting the substance of meetings in which individual sexual assault cases are discussed by any sexual assault team established pursuant to § 15.2-1627.4. The findings of the team may be disclosed or published in statistical or other aggregated form that does not disclose the identity of specific individuals.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518, 844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, cc. 426, 690, 832; 2005, cc. 165, 508; 2007, cc. 406, 652, 660, 737, 739; 2008, cc. 16, 739; 2009, cc. 223, 827, 845; 2010, c. 300; 2011, cc. 827, 867; 2012, c. 726; 2013, cc. 199, 481, 554, 574; 2014, cc. 225, 808; 2015, cc. 38, 137, 549, 730; 2016, cc. 550, 620, 716, 729.

§ 2.2-3705.8. Limitation on record exclusions

A. Neither any provision of this chapter nor any provision of Chapter 38 (§ 2.2-3800 et seq.) of this title shall be construed as denying public access to (i) contracts between a public body and its officers or employees, other than contracts settling public employee employment disputes held confidential as personnel records under § 2.2-3705.1; (ii) records of the position, job classification, official salary or rate of pay of, and records of the allowances or reimbursements for expenses paid to any officer, official or employee of a public body; or (iii) the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees.

The provisions of this subsection, however, shall not require public access to records of the official salaries or rates of pay of public employees whose annual rate of pay is $10,000 or less.

B. Nothing in this chapter shall be construed as denying public access to the nonexempt portions of a report of a consultant hired by or at the request of a local public body or the mayor or chief executive or administrative officer of such public body if (i) the contents of such report have been distributed or disclosed to members of the local public body or (ii) the local public body has scheduled any action on a matter that is the subject of the consultant's report.

1999, cc. 485, 518, 703, 726, 793, 849, 852, 867, 868, 881, § 2.1-342.01; 2000, cc. 66, 237, 382, 400, 430, 583, 589, 592, 594, 618, 632, 657, 720, 932, 933, 947, 1006, 1064; 2001, cc. 288, 518,

844, § 2.2-3705; 2002, cc. 87, 155, 242, 393, 478, 481, 499, 522, 571, 572, 633, 655, 715, 798, 830; 2003, cc. 274, 307, 327, 332, 358, 704, 801, 884, 891, 893, 897, 968; 2004, c. 690.

§ 2.2-3706. Disclosure of criminal records; limitations

A. All public bodies engaged in criminal law-enforcement activities shall provide requested records in accordance with this chapter as follows:

1. Records required to be released:

a. Criminal incident information relating to felony offenses, which shall include:

(1) A general description of the criminal activity reported;

(2) The date the alleged crime was committed;

(3) The general location where the alleged crime was committed;

(4) The identity of the investigating officer or other point of contact; and

(5) A general description of any injuries suffered or property damaged or stolen.

A verbal response as agreed to by the requester and the public body is sufficient to satisfy the requirements of subdivision a.

Where the release of criminal incident information, however, is likely to jeopardize an ongoing investigation or prosecution or the safety of an individual, cause a suspect to flee or evade detection, or result in the destruction of evidence, such information may be withheld until the above-referenced damage is no longer likely to occur from release of the information. Nothing in subdivision a shall be construed to authorize the withholding of those portions of such information that are not likely to cause the above-referenced damage;

b. Adult arrestee photographs taken during the initial intake following the arrest and as part of the routine booking procedure, except when necessary to avoid jeopardizing an investigation in felony cases until such time as the release of the photograph will no longer jeopardize the investigation; and

c. Information relative to the identity of any individual, other than a juvenile, who is arrested and charged, and the status of the charge or arrest;

2. Discretionary releases. The following records are excluded from the mandatory disclosure provisions of this chapter, but may be disclosed by the custodian, in his discretion, except where such disclosure is prohibited by law:

a. Criminal investigative files, defined as any documents and information, including complaints, court orders, memoranda, notes, diagrams, maps, photographs, correspondence, reports, witness statements, and evidence relating to a criminal investigation or prosecution, other than criminal incident information subject to release in accordance with subdivision 1 a;

b. (Effective until October 1, 2016) Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.), and (iii) campus police departments of public institutions of higher education established pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;

b. (Effective October 1, 2016) Reports submitted in confidence to (i) state and local law-enforcement agencies, (ii) investigators authorized pursuant to Chapter 3.2 (§ 2.2-307 et seq.), and (iii) campus police departments of public institutions of higher education established pursuant to Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1;

c. Records of local law-enforcement agencies relating to neighborhood watch programs that include the names, addresses, and operating schedules of individual participants in the program that are provided to such agencies under a promise of anonymity;

d. All records of persons imprisoned in penal institutions in the Commonwealth provided such records relate to the imprisonment;

e. Records of law-enforcement agencies, to the extent that such records contain specific tactical plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or the general public;

f. All records of adult persons under (i) investigation or supervision by a local pretrial services agency in accordance with Article 5 (§ 19.2-152.2 et seq.) of Chapter 9 of Title 19.2; (ii) investigation, probation supervision, or monitoring by a local community-based probation services agency in accordance with Article 9 (§ 9.1-173 et seq.) of Chapter 1 of Title 9.1; or (iii) investigation or supervision by state probation and parole services in accordance with Article 2 (§ 53.1-141 et seq.) of Chapter 4 of Title 53.1;

g. Records of a law-enforcement agency to the extent that they disclose the telephone numbers for cellular telephones, pagers, or comparable portable communication devices provided to its personnel for use in the performance of their official duties;

h. Those portions of any records containing information related to undercover operations or protective details that would reveal the staffing, logistics, or tactical plans of such undercover operations or protective details. Nothing in this subdivision shall operate to allow the withholding of information concerning the overall costs or expenses associated with undercover operations or protective details;

i. Records of (i) background investigations of applicants for law-enforcement agency employment, (ii) administrative investigations relating to allegations of wrongdoing by employees of a law-enforcement agency, and (iii) other administrative investigations conducted by law-enforcement agencies that are made confidential by law;

j. The identity of any victim, witness, or undercover officer, or investigative techniques or procedures. However, the identity of any victim or witness shall be withheld if disclosure is prohibited or restricted under § 19.2-11.2; and

k. Records of the Sex Offender and Crimes Against Minors Registry maintained by the Department of State Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, including information obtained from state, local, and regional officials, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913; and

3. Prohibited releases. The identity of any individual providing information about a crime or criminal activity under a promise of anonymity shall not be disclosed.

B. Noncriminal records. Those portions of noncriminal incident or other noncriminal investigative reports or materials that contain identifying information of a personal, medical, or financial nature may be withheld where the release of such information would jeopardize the safety or privacy of any person. Access to personnel records of persons employed by a law-enforcement agency shall be governed by the provisions of subdivision A 2 i of this section and subdivision 1 of § 2.2-3705.1, as applicable.

C. Records of any call for service or other communication to an emergency 911 system or communicated with any other equivalent reporting system shall be subject to the provisions of this chapter.

D. Conflict resolution. In the event of conflict between this section as it relates to requests made under this section and other provisions of law, this section shall control.

1999, cc. 703, 726, § 2.1-342.2; 2000, c. 227; 2001, c. 844; 2002, cc. 393, 715, 769, 830; 2004, cc. 685, 735; 2006, cc. 857, 914; 2007, c. 133; 2010, c. 627; 2011, cc. 798, 871; 2013, c. 695; 2016, cc. 184, 546.

§ 2.2-3707. Meetings to be public; notice of meetings; recordings; minutes

A. All meetings of public bodies shall be open, except as provided in §§ 2.2-3707.01 and 2.2-3711.

B. No meeting shall be conducted through telephonic, video, electronic or other communication means where the members are not physically assembled to discuss or transact public business, except as provided in § 2.2-3708, 2.2-3708.1 or as may be specifically provided in Title 54.1 for the summary suspension of professional licenses.

C. Every public body shall give notice of the date, time, and location of its meetings by placing the notice in a prominent public location at which notices are regularly posted and in the office of the clerk of the public body, or in the case of a public body that has no clerk, in the office of the chief administrator. All state public bodies subject to the provisions of this chapter shall also post notice of their meetings on their websites and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar. Publication of meeting notices by electronic means by other public bodies shall be encouraged. The

notice shall be posted at least three working days prior to the meeting. Notices for meetings of state public bodies on which there is at least one member appointed by the Governor shall state whether or not public comment will be received at the meeting and, if so, the approximate point during the meeting when public comment will be received.

D. Notice, reasonable under the circumstance, of special or emergency meetings shall be given contemporaneously with the notice provided members of the public body conducting the meeting.

E. Any person may annually file a written request for notification with a public body. The request shall include the requester's name, address, zip code, daytime telephone number, electronic mail address, if available, and organization, if any. The public body receiving such request shall provide notice of all meetings directly to each such person. Without objection by the person, the public body may provide electronic notice of all meetings in response to such requests.

F. At least one copy of all agenda packets and, unless exempt, all materials furnished to members of a public body for a meeting shall be made available for public inspection at the same time such documents are furnished to the members of the public body.

G. The notice provisions of this chapter shall not apply to informal meetings or gatherings of the members of the General Assembly.

H. Any person may photograph, film, record or otherwise reproduce any portion of a meeting required to be open. The public body conducting the meeting may adopt rules governing the placement and use of equipment necessary for broadcasting, photographing, filming or recording a meeting to prevent interference with the proceedings, but shall not prohibit or otherwise prevent any person from photographing, filming, recording, or otherwise reproducing any portion of a meeting required to be open. No public body shall conduct a meeting required to be open in any building or facility where such recording devices are prohibited.

I. Minutes shall be recorded at all open meetings. However, minutes shall not be required to be taken at deliberations of (i) standing and other committees of the General Assembly; (ii) legislative interim study commissions and committees, including the Virginia Code Commission; (iii) study committees or commissions appointed by the Governor; or (iv) study commissions or study committees, or any other committees or subcommittees appointed by the governing bodies or school boards of counties, cities and towns, except where the membership of any such commission, committee or subcommittee includes a majority of the governing body of the county, city or town or school board.

Minutes, including draft minutes, and all other records of open meetings, including audio or audio/visual records shall be deemed public records and subject to the provisions of this chapter.

Minutes shall be in writing and shall include (i) the date, time, and location of the meeting; (ii) the members of the public body recorded as present and absent; and (iii) a summary of the discussion on matters proposed, deliberated or decided, and a record of any votes taken. In addition,

for electronic communication meetings conducted in accordance with § 2.2-3708, minutes of state public bodies shall include (a) the identity of the members of the public body at each remote location identified in the notice who participated in the meeting through electronic communications means, (b) the identity of the members of the public body who were physically assembled at the primary or central meeting location, and (c) the identity of the members of the public body who were not present at the locations identified in clauses (a) and (b), but who monitored such meeting through electronic communications means.

1968, c. 479, § 2.1-343; 1973, c. 461; 1976, c. 467; 1977, c. 677; 1982, c. 333; 1989, c. 358; 1990, c. 538; 1993, c. 720; 1995, c. 562; 1999, cc. 696, 703, 726; 2000, c. 227; 2001, c. 844; 2004, cc. 730, 768; 2005, c. 352; 2007, c. 300; 2009, c. 628; 2010, c. 309; 2015, c. 131.

§ 2.2-3707.01. Meetings of the General Assembly

A. Except as provided in subsection B, public access to any meeting of the General Assembly or a portion thereof shall be governed by rules established by the Joint Rules Committee and approved by a majority vote of each house at the next regular session of the General Assembly. At least 60 days before the adoption of such rules, the Joint Rules Committee shall (i) hold regional public hearings on such proposed rules and (ii) provide a copy of such proposed rules to the Virginia Freedom of Information Advisory Council.

B. Floor sessions of either house of the General Assembly; meetings, including work sessions, of any standing or interim study committee of the General Assembly; meetings, including work sessions, of any subcommittee of such standing or interim study committee; and joint committees of conference of the General Assembly; or a quorum of any such committees or subcommittees, shall be open and governed by this chapter.

C. Meetings of the respective political party caucuses of either house of the General Assembly, including meetings conducted by telephonic or other electronic communication means, without regard to (i) whether the General Assembly is in or out of regular or special session or (ii) whether such caucuses invite staff or guests to participate in their deliberations, shall not be deemed meetings for the purposes of this chapter.

D. No regular, special, or reconvened session of the General Assembly held pursuant to Article IV, Section 6 of the Constitution of Virginia shall be conducted using electronic communication means pursuant § 2.2-3708.

2004, c. 768; 2005, c. 352.

§ 2.2-3707.1. Posting of minutes for state boards and commissions

All boards, commissions, councils, and other public bodies created in the executive branch of state government and subject to the provisions of this chapter shall post minutes of their meetings on such body's website, if any, and on the electronic calendar maintained by the Virginia Information Technologies Agency commonly known as the Commonwealth Calendar. Draft minutes of meetings shall be posted as soon as possible but no later than ten working days after the conclusion of

the meeting. Final approved meeting minutes shall be posted within three working days of final approval of the minutes.

2002, cc. 580, 618; 2006, cc. 474, 595; 2007, c. 300.

§ 2.2-3708. Electronic communication meetings; applicability; physical quorum required; exceptions; notice; report

A. Except as expressly provided in subsection G of this section or § 2.2-3708.1, no local governing body, school board, or any authority, board, bureau, commission, district or agency of local government, any committee thereof, or any entity created by a local governing body, school board, or any local authority, board, or commission shall conduct a meeting wherein the public business is discussed or transacted through telephonic, video, electronic or other communication means where the members are not physically assembled. Nothing in this section shall be construed to prohibit the use of interactive audio or video means to expand public participation.

B. Except as provided in subsection G or H of this section or subsection D of § 2.2-3707.01, state public bodies may conduct any meeting wherein the public business is discussed or transacted through electronic communication means, provided (i) a quorum of the public body is physically assembled at one primary or central meeting location, (ii) notice of the meeting has been given in accordance with subsection C, and (iii) the remote locations, from which additional members of the public body participate through electronic communication means, are open to the public. All persons attending the meeting at any of the meeting locations shall be afforded the same opportunity to address the public body as persons attending the primary or central location.

If an authorized public body holds an electronic meeting pursuant to this section, it shall also hold at least one meeting annually where members in attendance at the meeting are physically assembled at one location and where no members participate by electronic communication means.

C. Notice of any meetings held pursuant to this section shall be provided at least three working days in advance of the date scheduled for the meeting. The notice shall include the date, time, place, and purpose for the meeting; shall identify the locations for the meeting; and shall include a telephone number that may be used at remote locations to notify the primary or central meeting location of any interruption in the telephonic or video broadcast of the meeting to the remote locations. Any interruption in the telephonic or video broadcast of the meeting shall result in the suspension of action at the meeting until repairs are made and public access restored.

D. Agenda packets and, unless exempt, all materials that will be distributed to members of the public body and that have been made available to the staff of the public body in sufficient time for duplication and forwarding to all locations where public access will be provided shall be made available to the public at the time of the meeting. Minutes of all meetings held by electronic communication means shall be recorded as required by § 2.2-3707. Votes taken during any meeting conducted through electronic communication means shall be recorded by name in roll-call fashion and included in the minutes.

E. Three working days' notice shall not be required for meetings authorized under this section held in accordance with subsection G or that are continued to address an emergency or to conclude the agenda of the meeting for which proper notice has been given, when the date, time, place, and purpose of the continued meeting are set during the meeting prior to adjournment. Public bodies conducting emergency meetings through electronic communication means shall comply with the provisions of subsection D requiring minutes of the meeting. The nature of the emergency shall be stated in the minutes.

F. Any authorized public body that meets by electronic communication means shall make a written report of the following to the Virginia Freedom of Information Advisory Council and the Joint Commission on Technology and Science by December 15 of each year:

1. The total number of electronic communication meetings held that year;

2. The dates and purposes of the meetings;

3. A copy of the agenda for the meeting;

4. The number of sites for each meeting;

5. The types of electronic communication means by which the meetings were held;

6. The number of participants, including members of the public, at each meeting location;

7. The identity of the members of the public body recorded as absent and those recorded as present at each meeting location;

8. A summary of any public comment received about the electronic communication meetings; and

9. A written summary of the public body's experience using electronic communication meetings, including its logistical and technical experience.

In addition, any authorized public body shall make available to the public at any meeting conducted in accordance with this section a public comment form prepared by the Virginia Freedom of Information Advisory Council in accordance with § 30-179.

G. Any public body may meet by electronic communication means without a quorum of the public body physically assembled at one location when the Governor has declared a state of emergency in accordance with § 44-146.17, provided (i) the catastrophic nature of the declared emergency makes it impracticable or unsafe to assemble a quorum in a single location and (ii) the purpose of the meeting is to address the emergency. The public body convening a meeting in accordance with this subsection shall (a) give public notice using the best available method given the nature of the emergency, which notice shall be given contemporaneously with the notice provided members of the public body conducting the meeting; (b) make arrangements for public access to such meeting; and (c) otherwise comply with the provisions of this section. The nature of the emergency, the fact that the meeting was held by electronic communication means, and the type of electronic communication means by which the meeting was held shall be stated in the minutes.

H. [Expired].

1984, c. 252, § 2.1-343.1; 1989, c. 358; 1991, c. 473; 1992, c. 153; 1993, c. 270; 1995, c. 278; 1996, c. 289; 1999, cc. 703, 726; 2001, c. 844; 2003, cc. 981, 1021; 2005, c. 352; 2007, cc. 512, 945; 2008, cc. 233, 789; 2013, c. 694.

§ 2.2-3708.1. Participation in meetings in event of emergency or personal matter; certain disabilities; distance from meeting location for certain public bodies

A. A member of a public body may participate in a meeting governed by this chapter through electronic communication means from a remote location that is not open to the public only as follows and subject to the requirements of subsection B:

1. If, on or before the day of a meeting, a member of the public body holding the meeting notifies the chair of the public body that such member is unable to attend the meeting due to an emergency or personal matter and identifies with specificity the nature of the emergency or personal matter, and the public body holding the meeting records in its minutes the specific nature of the emergency or personal matter and the remote location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.

Such participation by the member shall be limited each calendar year to two meetings or 25 percent of the meetings of the public body, whichever is fewer;

2. If a member of a public body notifies the chair of the public body that such member is unable to attend a meeting due to a temporary or permanent disability or other medical condition that prevents the member's physical attendance and the public body records this fact and the remote location from which the member participated in its minutes; or

3. If, on the day of a meeting, a member of a regional public body notifies the chair of the public body that such member's principal residence is more than 60 miles from the meeting location identified in the required notice for such meeting and the public body holding the meeting records in its minutes the remote location from which the member participated. If a member's participation from a remote location is disapproved because such participation would violate the policy adopted pursuant to subsection B, such disapproval shall be recorded in the minutes with specificity.

B. Participation by a member of a public body as authorized under subsection A shall be only under the following conditions:

1. The public body has adopted a written policy allowing for and governing participation of its members by electronic communication means, including an approval process for such participation, subject to the express limitations imposed by this section. Once adopted, the policy shall be applied strictly and uniformly, without exception, to the entire membership and without

regard to the identity of the member requesting remote participation or the matters that will be considered or voted on at the meeting;

2. A quorum of the public body is physically assembled at the primary or central meeting location; and

3. The public body makes arrangements for the voice of the remote participant to be heard by all persons at the primary or central meeting location.

2007, c. 945; 2013, cc. 119, 694; 2014, cc. 492, 524.

§ 2.2-3709. Expired

Expired.

§ 2.2-3710. Transaction of public business other than by votes at meetings prohibited

A. Unless otherwise specifically provided by law, no vote of any kind of the membership, or any part thereof, of any public body shall be taken to authorize the transaction of any public business, other than a vote taken at a meeting conducted in accordance with the provisions of this chapter. No public body shall vote by secret or written ballot, and unless expressly provided by this chapter, no public body shall vote by telephone or other electronic communication means.

B. Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit (i) separately contacting the membership, or any part thereof, of any public body for the purpose of ascertaining a member's position with respect to the transaction of public business, whether such contact is done in person, by telephone or by electronic communication, provided the contact is done on a basis that does not constitute a meeting as defined in this chapter or (ii) the House of Delegates or the Senate of Virginia from adopting rules relating to the casting of votes by members of standing committees. Nothing in this subsection shall operate to exclude any public record from the provisions of this chapter.

1987, c. 71, § 2.1-343.2; 1999, cc. 703, 726; 2000, c. 932; 2001, cc. 710, 844; 2002, c. 491.

§ 2.2-3711. Closed meetings authorized for certain limited purposes

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided the teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision, however, shall be construed to authorize a

closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any Virginia public institution of higher education or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. In the case of boards of visitors of public institutions of higher education, discussion or consideration of matters relating to gifts, bequests and fund-raising activities, and grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in Virginia shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government" means any government other than the United States government or the government of a state or a political subdivision thereof; (ii) "foreign legal entity" means any legal entity created under the laws of the United States or of any

state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities, or any legal entity created under the laws of a foreign government; and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

9. In the case of the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, and The Science Museum of Virginia, discussion or consideration of matters relating to specific gifts, bequests, and grants.

10. Discussion or consideration of honorary degrees or special awards.

11. Discussion or consideration of tests, examinations, or other information excluded from this chapter pursuant to subdivision 4 of § 2.2-3705.1.

12. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided the member may request in writing that the committee meeting not be conducted in a closed meeting.

13. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

14. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

15. Discussion or consideration of medical and mental health records excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.5.

16. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game information and studies or investigations exempted from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

17. Those portions of meetings by local government crime commissions where the identity of, or information tending to identify, individuals providing information about crimes or criminal activities under a promise of anonymity is discussed or disclosed.

18. Those portions of meetings in which the Board of Corrections discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the

apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of information excluded from this chapter pursuant to subdivision 3 or 4 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. (Effective until October 1, 2016) Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23-76.1, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23-38.80, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

20. (Effective October 1, 2016) Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Virginia College Savings Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the Rector and Visitors of the University of Virginia, prepared by the retirement system or by the Virginia College Savings Plan or provided to the retirement system or the Virginia College Savings Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to

be acquired, held or disposed of by the retirement system, the Rector and Visitors of the University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, and those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6.

22. Those portions of meetings of the University of Virginia Board of Visitors or the Eastern Virginia Medical School Board of Visitors, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or Eastern Virginia Medical School, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the Medical Center or Eastern Virginia Medical School, as the case may be.

23. In the case of the Virginia Commonwealth University Health System Authority, discussion or consideration of any of the following: the acquisition or disposition of real or personal property where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; operational plans that could affect the value of such property, real or personal, owned or desirable for ownership by the Authority; matters relating to gifts, bequests and fund-raising activities; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies where disclosure of such strategies would adversely affect the competitive position of the Authority; members of its medical and teaching staffs and qualifications for appointments thereto; and qualifications or evaluations of other employees. This exclusion shall also apply when the foregoing discussions occur at a meeting of the Virginia Commonwealth University Board of Visitors.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any prac-

titioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. (Effective until October 1, 2016) Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23 is discussed.

25. (Effective October 1, 2016) Meetings or portions of meetings of the Board of the Virginia College Savings Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1 is discussed.

26. Discussion or consideration, by the Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to § 56-484.15, of trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), submitted by CMRS providers as defined in § 56-484.12, related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of information excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-1800, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application information excluded from this chapter pursuant to subdivision 17 of § 2.2-3705.6 by (i) the Commonwealth Health Research Board or (ii) the Innovation and Entrepreneurship Investment Authority or the Research and Technology Investment Advisory Committee appointed to advise the Innovation and Entrepreneurship Investment Authority.

31. Discussion or consideration by the Commitment Review Committee of information excluded from this chapter pursuant to subdivision 8 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. [Expired.]

33. Discussion or consideration of confidential proprietary information and trade secrets excluded from this chapter pursuant to subdivision 18 of § 2.2-3705.6. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

34. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets excluded from this chapter pursuant to subdivision 19 of § 2.2-3705.6.

35. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-625.1.

36. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of records excluded from this chapter pursuant to subdivision A 2 a of § 2.2-3706.

37. Discussion or consideration by the Brown v. Board of Education Scholarship Program Awards Committee of information or confidential matters excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

38. Discussion or consideration by the Virginia Port Authority of information excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.6.

39. (Effective until October 1, 2016) Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23-38.80, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23-38.79:1 of information excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

39. (Effective October 1, 2016) Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Virginia College Savings Plan acting pursuant to § 23.1-706, or by the Virginia College Savings Plan's Investment Advisory Committee appointed pursuant to § 23.1-702 of information excluded from this chapter pursuant to subdivision 25 of § 2.2-3705.7.

40. Discussion or consideration of information excluded from this chapter pursuant to subdivision 3 of § 2.2-3705.6.

41. Discussion or consideration by the Board of Education of information relating to the denial, suspension, or revocation of teacher licenses excluded from this chapter pursuant to subdivision 12 of § 2.2-3705.3.

42. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of information excluded from this chapter pursuant to subdivision 11 of § 2.2-3705.2.

43. Discussion or consideration by the Board of Trustees of theVeterans Services Foundation of information excluded from this chapter pursuant to subdivision 29 of § 2.2-3705.7.

44. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of information excluded from this chapter pursuant to subdivision 23 of § 2.2-3705.6.

45. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of information excluded from this chapter pursuant to subdivision 24 of § 2.2-3705.6.

46. Discussion or consideration of personal and proprietary information that are excluded from the provisions of this chapter pursuant to (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

47. (Effective July 1, 2016) Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information excluded from this chapter pursuant to subdivision 1 of § 2.2-3705.3 or subdivision 34 of § 2.2-3705.7.

48. (Effective until October 1, 2016) Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the Virginia Research Investment Fund pursuant to Chapter 28 (§ 23-304 et seq.) of Title 23.

48. (Effective October 1, 2016) Discussion or consideration of grant or loan application records excluded from this chapter pursuant to subdivision 28 of § 2.2-3705.6 related to the submission of an application for an award from the Virginia Research Investment Fund pursuant to Article 8 (§ 23.1-3130 et seq.) of Chapter 31 of Title 23.1.

49. Discussion or development of grant proposals by a regional council established pursuant to Article 26 (§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity Board.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

1968, c. 479, § 2.1-344; 1970, c. 456; 1973, c. 461; 1974, c. 332; 1976, cc. 467, 709; 1979, cc. 369, 684; 1980, cc. 221, 475, 476, 754; 1981, cc. 35, 471; 1982, cc. 497, 516; 1984, cc. 473, 513; 1985, c. 277; 1988, c. 891; 1989, cc. 56, 358, 478; 1990, cc. 435, 538; 1991, c. 708; 1992, c. 444; 1993, cc. 270, 499; 1995, c. 499; 1996, cc. 855, 862, 902, 905, 1046; 1997, cc. 439, 641, 785, 861; 1999, cc. 485, 518, 703, 726, 849, 867, 868; 2000, cc. 382, 400, 720, 1064; 2001, cc. 231, 844; 2002, cc. 87, 393, 455, 478, 499, 655, 715, 830; 2003, cc. 274, 291, 332, 618, 703; 2004, cc. 398, 690, 770; 2005, cc. 258, 411, 568; 2006, cc. 430, 499, 518, 560; 2007, cc. 133, 374, 566, 739; 2008, cc. 626, 633, 668, 721, 743; 2009, cc. 223, 325, 472, 765, 810, 827, 845; 2010, cc. 310, 630, 808; 2011, cc. 89, 111, 147, 536, 541, 816, 874; 2012, cc. 476, 507, 803, 835; 2013, cc. 571, 580, 695; 2014, c. 225; 2015, cc. 27, 38, 108, 169, 182, 549, 730; 2016, cc. 544, 620, 716, 724, 725, 775, 778, 779.

§ 2.2-3712. Closed meetings procedures; certification of proceedings

A. No closed meeting shall be held unless the public body proposing to convene such meeting has taken an affirmative recorded vote in an open meeting approving a motion that (i) identifies the subject matter, (ii) states the purpose of the meeting and (iii) makes specific reference to the applicable exemption from open meeting requirements provided in § 2.2-3707 or subsection A of § 2.2-

3711. The matters contained in such motion shall be set forth in detail in the minutes of the open meeting. A general reference to the provisions of this chapter, the authorized exemptions from open meeting requirements, or the subject matter of the closed meeting shall not be sufficient to satisfy the requirements for holding a closed meeting.

B. The notice provisions of this chapter shall not apply to closed meetings of any public body held solely for the purpose of interviewing candidates for the position of chief administrative officer. Prior to any such closed meeting for the purpose of interviewing candidates, the public body shall announce in an open meeting that such closed meeting shall be held at a disclosed or undisclosed location within 15 days thereafter.

C. The public body holding a closed meeting shall restrict its discussion during the closed meeting only to those matters specifically exempted from the provisions of this chapter and identified in the motion required by subsection A.

D. At the conclusion of any closed meeting, the public body holding such meeting shall immediately reconvene in an open meeting and shall take a roll call or other recorded vote to be included in the minutes of that body, certifying that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under this chapter and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the meeting by the public body. Any member of the public body who believes that there was a departure from the requirements of clauses (i) and (ii), shall so state prior to the vote, indicating the substance of the departure that, in his judgment, has taken place. The statement shall be recorded in the minutes of the public body.

E. Failure of the certification required by subsection D to receive the affirmative vote of a majority of the members of the public body present during a meeting shall not affect the validity or confidentiality of such meeting with respect to matters considered therein in compliance with the provisions of this chapter. The recorded vote and any statement made in connection therewith, shall upon proper authentication, constitute evidence in any proceeding brought to enforce the provisions of this chapter.

F. A public body may permit nonmembers to attend a closed meeting if such persons are deemed necessary or if their presence will reasonably aid the public body in its consideration of a topic that is a subject of the meeting.

G. A member of a public body shall be permitted to attend a closed meeting held by any committee or subcommittee of that public body, or a closed meeting of any entity, however designated, created to perform the delegated functions of or to advise that public body. Such member shall in all cases be permitted to observe the closed meeting of the committee, subcommittee or entity. In addition to the requirements of § 2.2-3707, the minutes of the committee or other

entity shall include the identity of the member of the parent public body who attended the closed meeting.

H. Except as specifically authorized by law, in no event may any public body take action on matters discussed in any closed meeting, except at an open meeting for which notice was given as required by § 2.2-3707.

I. Minutes may be taken during closed meetings of a public body, but shall not be required. Such minutes shall not be subject to mandatory public disclosure.

1989, c. 358, § 2.1-344.1; 1999, cc. 703, 726; 2001, c. 844; 2012, c. 428.

§ 2.2-3713. Proceedings for enforcement of chapter

A. Any person, including the attorney for the Commonwealth acting in his official or individual capacity, denied the rights and privileges conferred by this chapter may proceed to enforce such rights and privileges by filing a petition for mandamus or injunction, supported by an affidavit showing good cause. Such petition may be brought in the name of the person notwithstanding that a request for public records was made by the person's attorney in his representative capacity. Venue for the petition shall be addressed as follows:

1. In a case involving a local public body, to the general district court or circuit court of the county or city from which the public body has been elected or appointed to serve and in which such rights and privileges were so denied;

2. In a case involving a regional public body, to the general district or circuit court of the county or city where the principal business office of such body is located; and

3. In a case involving a board, bureau, commission, authority, district, institution, or agency of the state government, including a public institution of higher education, or a standing or other committee of the General Assembly, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. In any action brought before a general district court, a corporate petitioner may appear through its officer, director or managing agent without the assistance of counsel, notwithstanding any provision of law or Rule of the Supreme Court of Virginia to the contrary.

C. Notwithstanding the provisions of § 8.01-644, the petition for mandamus or injunction shall be heard within seven days of the date when the same is made, provided the party against whom the petition is brought has received a copy of the petition at least three working days prior to filing. The hearing on any petition made outside of the regular terms of the circuit court of a locality that is included in a judicial circuit with another locality or localities shall be given precedence on the docket of such court over all cases that are not otherwise given precedence by law.

D. The petition shall allege with reasonable specificity the circumstances of the denial of the rights and privileges conferred by this chapter. A single instance of denial of the rights and privileges conferred by this chapter shall be sufficient to invoke the remedies granted herein. If the court finds

the denial to be in violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs, including costs and reasonable fees for expert witnesses, and attorneys' fees from the public body if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of a public body on an opinion of the Attorney General or a decision of a court that substantially supports the public body's position.

E. In any action to enforce the provisions of this chapter, the public body shall bear the burden of proof to establish an exclusion by a preponderance of the evidence. No court shall be required to accord any weight to the determination of a public body as to whether an exclusion applies. Any failure by a public body to follow the procedures established by this chapter shall be presumed to be a violation of this chapter.

F. Failure by any person to request and receive notice of the time and place of meetings as provided in § 2.2-3707 shall not preclude any person from enforcing his rights and privileges conferred by this chapter.

1968, c. 479, § 2.1-346; 1976, c. 709; 1978, c. 826; 1989, c. 358; 1990, c. 217; 1996, c. 578; 1999, cc. 703, 726; 2001, c. 844; 2007, c. 560; 2009, c. 634; 2010, c. 299; 2011, cc. 133, 783; 2016, cc. 620, 716.

§ 2.2-3714. Violations and penalties

In a proceeding commenced against any officer, employee, or member of a public body under § 2.2-3713 for a violation of § 2.2-3704, 2.2-3705.1 through 2.2-3705.8, 2.2-3706, 2.2-3707, 2.2-3708, 2.2-3708.1, 2.2-3710, 2.2-3711 or 2.2-3712, the court, if it finds that a violation was willfully and knowingly made, shall impose upon such officer, employee, or member in his individual capacity, whether a writ of mandamus or injunctive relief is awarded or not, a civil penalty of not less than $500 nor more than $2,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than $2,000 nor more than $5,000.

1976, c. 467, § 2.1-346.1; 1978, c. 826; 1984, c. 252; 1989, c. 358; 1996, c. 578; 1999, cc. 703, 726; 2001, c. 844; 2003, c. 319; 2004, c. 690; 2008, cc. 233, 789; 2011, c. 327.

Chapter 38 - GOVERNMENT DATA COLLECTION AND DISSEMINATION PRACTICES ACT

§ 2.2-3800. Short title; findings; principles of information practice

A. This chapter may be cited as the "Government Data Collection and Dissemination Practices Act."

B. The General Assembly finds that:

1. An individual's privacy is directly affected by the extensive collection, maintenance, use and dissemination of personal information;

2. The increasing use of computers and sophisticated information technology has greatly magnified the harm that can occur from these practices;

3. An individual's opportunities to secure employment, insurance, credit, and his right to due process, and other legal protections are endangered by the misuse of certain of these personal information systems; and

4. In order to preserve the rights guaranteed a citizen in a free society, legislation is necessary to establish procedures to govern information systems containing records on individuals.

C. Recordkeeping agencies of the Commonwealth and political subdivisions shall adhere to the following principles of information practice to ensure safeguards for personal privacy:

1. There shall be no personal information system whose existence is secret.

2. Information shall not be collected unless the need for it has been clearly established in advance.

3. Information shall be appropriate and relevant to the purpose for which it has been collected.

4. Information shall not be obtained by fraudulent or unfair means.

5. Information shall not be used unless it is accurate and current.

6. There shall be a prescribed procedure for an individual to learn the purpose for which information has been recorded and particulars about its use and dissemination.

7. There shall be a clearly prescribed and uncomplicated procedure for an individual to correct, erase or amend inaccurate, obsolete or irrelevant information.

8. Any agency holding personal information shall assure its reliability and take precautions to prevent its misuse.

9. There shall be a clearly prescribed procedure to prevent personal information collected for one purpose from being used for another purpose.

10. The Commonwealth or any agency or political subdivision thereof shall not collect personal information except as explicitly or implicitly authorized by law.

1976, c. 597, §§ 2.1-377, 2.1-378; 1987, c. 506; 2001, c. 844; 2003, cc. 791, 914, 918, 927; 2009, cc. 849, 867.

§ 2.2-3801. Definitions

As used in this chapter, unless the context requires a different meaning:

"Agency" means any agency, authority, board, department, division, commission, institution, bureau, or like governmental entity of the Commonwealth or of any unit of local government including counties, cities, towns, regional governments, and the departments thereof, and includes constitutional officers, except as otherwise expressly provided by law. "Agency" shall also include any entity, whether public or private, with which any of the foregoing has entered into a

contractual relationship for the operation of a system of personal information to accomplish an agency function. Any such entity included in this definition by reason of a contractual relationship shall only be deemed an agency as relates to services performed pursuant to that contractual relationship, provided that if any such entity is a consumer reporting agency, it shall be deemed to have satisfied all of the requirements of this chapter if it fully complies with the requirements of the Federal Fair Credit Reporting Act as applicable to services performed pursuant to such contractual relationship.

"Data subject" means an individual about whom personal information is indexed or may be located under his name, personal number, or other identifiable particulars, in an information system.

"Disseminate" means to release, transfer, or otherwise communicate information orally, in writing, or by electronic means.

"Information system" means the total components and operations of a record-keeping process, including information collected or managed by means of computer networks and the Internet, whether automated or manual, containing personal information and the name, personal number, or other identifying particulars of a data subject.

"Personal information" means all information that (i) describes, locates or indexes anything about an individual including, but not limited to, his social security number, driver's license number, agency-issued identification number, student identification number, real or personal property holdings derived from tax returns, and his education, financial transactions, medical history, ancestry, religion, political ideology, criminal or employment record, or (ii) affords a basis for inferring personal characteristics, such as finger and voice prints, photographs, or things done by or to such individual; and the record of his presence, registration, or membership in an organization or activity, or admission to an institution. "Personal information" shall not include routine information maintained for the purpose of internal office administration whose use could not be such as to affect adversely any data subject nor does the term include real estate assessment information.

"Purge" means to obliterate information completely from the transient, permanent, or archival records of an agency.

1976, c. 597, § 2.1-379; 1983, c. 372; 1999, c. 41; 2001, c. 844; 2003, c. 272; 2006, c. 474; 2008, cc. 840, 843; 2009, cc. 849, 867.

§ 2.2-3802. Systems to which chapter inapplicable

The provisions of this chapter shall not apply to personal information systems:

1. Maintained by any court of the Commonwealth;

2. Which may exist in publications of general circulation;

3. Contained in the Criminal Justice Information System as defined in §§ 9.1-126 through 9.1-137 or in the Sex Offender and Crimes Against Minors Registry maintained by the Department of State

Police pursuant to Chapter 9 (§ 9.1-900 et seq.) of Title 9.1, except to the extent that information is required to be posted on the Internet pursuant to § 9.1-913;

4. Contained in the Virginia Juvenile Justice Information System as defined in §§ 16.1-222 through 16.1-225;

5. Maintained by agencies concerning persons required by law to be licensed in the Commonwealth to engage in the practice of any profession, in which case the names and addresses of persons applying for or possessing the license may be disseminated upon written request to a person engaged in the profession or business of offering professional educational materials or courses for the sole purpose of providing the licensees or applicants for licenses with informational materials relating solely to available professional educational materials or courses, provided the disseminating agency is reasonably assured that the use of the information will be so limited;

6. (Effective until July 1, 2018) Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the Department of Alcoholic Beverage Control;

6. (Effective July 1, 2018) Maintained by the Parole Board, the Crime Commission, the Judicial Inquiry and Review Commission, the Virginia Racing Commission, and the Virginia Alcoholic Beverage Control Authority;

7. (Effective until October 1, 2016) Maintained by the Department of State Police; the police department of the Chesapeake Bay Bridge and Tunnel Commission; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of Title 23, and that deal with investigations and intelligence gathering relating to criminal activity; and maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;

7. (Effective October 1, 2016) Maintained by the Department of State Police; the police department of the Chesapeake Bay Bridge and Tunnel Commission; police departments of cities, counties, and towns; and the campus police departments of public institutions of higher education as established by Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1, and that deal with investigations and intelligence gathering relating to criminal activity; and maintained by local departments of social services regarding alleged cases of child abuse or neglect while such cases are also subject to an ongoing criminal prosecution;

8. Maintained by the Virginia Port Authority as provided in § 62.1-132.4 or 62.1-134.1;

9. Maintained by the Virginia Tourism Authority in connection with or as a result of the promotion of travel or tourism in the Commonwealth, in which case names and addresses of persons requesting information on those subjects may be disseminated upon written request to a person engaged in the business of providing travel services or distributing travel information, provided

the Virginia Tourism Authority is reasonably assured that the use of the information will be so limited;

10. Maintained by the Division of Consolidated Laboratory Services of the Department of General Services and the Department of Forensic Science, which deal with scientific investigations relating to criminal activity or suspected criminal activity, except to the extent that § 9.1-1104 may apply;

11. Maintained by the Department of Corrections or the Office of the State Inspector General that deal with investigations and intelligence gathering by persons acting under the provisions of Chapter 3.2 (§ 2.2-307 et seq.);

12. Maintained by (i) the Office of the State Inspector General or internal audit departments of state agencies or institutions that deal with communications and investigations relating to the Fraud, Waste and Abuse Hotline or (ii) an auditor appointed by the local governing body of any county, city, or town or a school board that deals with local investigations required by § 15.2-2511.2;

13. Maintained by the Department of Social Services or any local department of social services relating to public assistance fraud investigations; and

14. Maintained by the Department of Social Services related to child welfare, adult services or adult protective services, or public assistance programs when requests for personal information are made to the Department of Social Services. Requests for information from these systems shall be made to the appropriate local department of social services, which is the custodian of that record. Notwithstanding the language in this section, an individual shall not be prohibited from obtaining information from the central registry in accordance with the provisions of § 63.2-1515.

1976, c. 597, § 2.1-384; 1979, c. 685; 1980, c. 752; 1981, cc. 461, 464, 504, 589; 1982, c. 225; 1983, c. 289; 1984, c. 750; 1986, c. 62; 1990, c. 825; 1992, c. 620; 1993, cc. 205, 963; 1996, cc. 154, 590, 598, 952; 2001, c. 844; 2003, c. 406; 2005, cc. 868, 881; 2006, cc. 196, 857, 914; 2009, c. 573; 2011, cc. 798, 871; 2012, cc. 229, 268; 2013, cc. 572, 690, 717, 723; 2015, cc. 38, 730.

§ 2.2-3803. Administration of systems including personal information; Internet privacy policy; exceptions

A. Any agency maintaining an information system that includes personal information shall:

1. Collect, maintain, use, and disseminate only that personal information permitted or required by law to be so collected, maintained, used, or disseminated, or necessary to accomplish a proper purpose of the agency;

2. Collect information to the greatest extent feasible from the data subject directly;

3. Establish categories for maintaining personal information to operate in conjunction with confidentiality requirements and access controls;

4. Maintain information in the system with accuracy, completeness, timeliness, and pertinence as necessary to ensure fairness in determinations relating to a data subject;

5. Make no dissemination to another system without (i) specifying requirements for security and usage including limitations on access thereto, and (ii) receiving reasonable assurances that those requirements and limitations will be observed. This subdivision shall not apply, however, to a dissemination made by an agency to an agency in another state, district or territory of the United States where the personal information is requested by the agency of such other state, district or territory in connection with the application of the data subject therein for a service, privilege or right under the laws thereof, nor shall this apply to information transmitted to family advocacy representatives of the United States Armed Forces in accordance with subsection N of § 63.2-1503;

6. Maintain a list of all persons or organizations having regular access to personal information in the information system;

7. Maintain for a period of three years or until such time as the personal information is purged, whichever is shorter, a complete and accurate record, including identity and purpose, of every access to any personal information in a system, including the identity of any persons or organizations not having regular access authority but excluding access by the personnel of the agency wherein data is put to service for the purpose for which it is obtained;

8. Take affirmative action to establish rules of conduct and inform each person involved in the design, development, operation, or maintenance of the system, or the collection or use of any personal information contained therein, about all the requirements of this chapter, the rules and procedures, including penalties for noncompliance, of the agency designed to assure compliance with such requirements;

9. Establish appropriate safeguards to secure the system from any reasonably foreseeable threat to its security; and

10. Collect no personal information concerning the political or religious beliefs, affiliations, and activities of data subjects that is maintained, used or disseminated in or by any information system operated by any agency unless authorized explicitly by statute or ordinance.

B. Every public body, as defined in § 2.2-3701, that has an Internet website associated with that public body shall develop an Internet privacy policy and an Internet privacy policy statement that explains the policy to the public. The policy shall be consistent with the requirements of this chapter. The statement shall be made available on the public body's website in a conspicuous manner. The Secretary of Technology or his designee shall provide guidelines for developing the policy and the statement, and each public body shall tailor the policy and the statement to reflect the information practices of the individual public body. At minimum, the policy and the statement shall address (i) what information, including personally identifiable information, will be collected, if any; (ii) whether any information will be automatically collected simply by accessing the website

and, if so, what information; (iii) whether the website automatically places a computer file, commonly referred to as a "cookie," on the Internet user's computer and, if so, for what purpose; and (iv) how the collected information is being used or will be used.

C. Notwithstanding the provisions of subsection A, the Virginia Retirement System may disseminate information as to the retirement status or benefit eligibility of any employee covered by the Virginia Retirement System, the Judicial Retirement System, the State Police Officers' Retirement System, or the Virginia Law Officers' Retirement System, to the chief executive officer or personnel officers of the state or local agency by which he is employed.

D. Notwithstanding the provisions of subsection A, the Department of Social Services may disseminate client information to the Department of Taxation for the purposes of providing specified tax information as set forth in clause (ii) of subsection C of § 58.1-3.

1976, c. 597, § 2.1-380; 1978, c. 409, § 2.1-384.1; 1989, c. 547; 2000, cc. 405, 500; 911; 2001, c. 844; 2002, c. 747; 2006, cc. 159, 590.

§ 2.2-3804. Military recruiters to have access to student information, school buildings, etc

If a public school board or public institution of higher education provides access to its buildings and grounds and the student information directory to persons or groups that make students aware of occupational or educational options, the board or institution shall provide access on the same basis to official recruiting representatives of the armed forces of the Commonwealth and the United States for the purpose of informing students of educational and career opportunities available in the armed forces.

1981, c. 377, § 2.1-380.1; 2001, c. 844.

§ 2.2-3805. Dissemination of reports

Any agency maintaining an information system that disseminates statistical reports or research findings based on personal information drawn from its system, or from other systems shall:

1. Make available to any data subject or group, without revealing trade secrets, methodology and materials necessary to validate statistical analysis, and

2. Make no materials available for independent analysis without guarantees that no personal information will be used in any way that might prejudice judgments about any data subject.

1976, c. 597, § 2.1-381; 2001, c. 844.

§ 2.2-3806. Rights of data subjects

A. Any agency maintaining personal information shall:

1. Inform an individual who is asked to supply personal information about himself whether he is legally required, or may refuse, to supply the information requested, and also of any specific consequences that are known to the agency of providing or not providing the information.

2. Give notice to a data subject of the possible dissemination of part or all of this information to another agency, nongovernmental organization or system not having regular access authority, and indicate the use for which it is intended, and the specific consequences for the individual, which are known to the agency, of providing or not providing the information. However documented permission for dissemination in the hands of the other agency or organization shall satisfy the requirement of this subdivision. The notice may be given on applications or other data collection forms prepared by data subjects.

3. Upon request and proper identification of any data subject, or of his authorized agent, grant the data subject or agent the right to inspect, in a form comprehensible to him:

a. All personal information about that data subject except as provided in subdivision 1 of § 2.2-3705.1, subdivision 1 of § 2.2-3705.4, and subdivision 1 of § 2.2-3705.5.

b. The nature of the sources of the information.

c. The names of recipients, other than those with regular access authority, of personal information about the data subject including the identity of all persons and organizations involved and their relationship to the system when not having regular access authority, except that if the recipient has obtained the information as part of an ongoing criminal investigation such that disclosure of the investigation would jeopardize law-enforcement action, then no disclosure of such access shall be made to the data subject.

4. Comply with the following minimum conditions of disclosure to data subjects:

a. An agency shall make disclosures to data subjects required under this chapter, during normal business hours, in accordance with the procedures set forth in subsections B and C of § 2.2-3704 for responding to requests under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) or within a time period as may be mutually agreed upon by the agency and the data subject.

b. The disclosures to data subjects required under this chapter shall be made (i) in person, if he appears in person and furnishes proper identification, or (ii) by mail, if he has made a written request, with proper identification. Copies of the documents containing the personal information sought by a data subject shall be furnished to him or his representative at reasonable charges for document search and duplication in accordance with subsection F of § 2.2-3704.

c. The data subject shall be permitted to be accompanied by a person of his choosing, who shall furnish reasonable identification. An agency may require the data subject to furnish a written statement granting the agency permission to discuss the individual's file in such person's presence.

5. If the data subject gives notice that he wishes to challenge, correct, or explain information about him in the information system, the following minimum procedures shall be followed:

a. The agency maintaining the information system shall investigate, and record the current status of that personal information.

b. If, after such investigation, the information is found to be incomplete, inaccurate, not pertinent, not timely, or not necessary to be retained, it shall be promptly corrected or purged.

c. If the investigation does not resolve the dispute, the data subject may file a statement of not more than 200 words setting forth his position.

d. Whenever a statement of dispute is filed, the agency maintaining the information system shall supply any previous recipient with a copy of the statement and, in any subsequent dissemination or use of the information in question, clearly note that it is disputed and supply the statement of the data subject along with the information.

e. The agency maintaining the information system shall clearly and conspicuously disclose to the data subject his rights to make such a request.

f. Following any correction or purging of personal information the agency shall furnish to past recipients notification that the item has been purged or corrected whose receipt shall be acknowledged.

B. Nothing in this chapter shall be construed to require an agency to disseminate any recommendation or letter of reference from or to a third party that is a part of the personnel file of any data subject nor to disseminate any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by any public body.

As used in this subsection, "test or examination" includes (i) any scoring key for any such test or examination and (ii) any other document that would jeopardize the security of the test or examination. Nothing contained in this subsection shall prohibit the release of test scores or results as provided by law, or to limit access to individual records as provided by law; however, the subject of the employment tests shall be entitled to review and inspect all documents relative to his performance on those employment tests.

When, in the reasonable opinion of the public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, the test or examination shall be made available to the public. Minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

C. Neither any provision of this chapter nor any provision of the Freedom of Information Act (§ 2.2-3700 et seq.) shall be construed to deny public access to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to any public officer, official or employee at any level of state, local or regional gov-

ernment in the Commonwealth. The provisions of this subsection shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is $10,000 or less.

D. Nothing in this section or in this chapter shall be construed to require an agency to disseminate information derived from tax returns in violation of §§ 2.2-3705.7 and 58.1-3.

1976, c. 597, § 2.1-382; 1978, c. 810; 1979, cc. 683, 688, 689; 1983, c. 372; 1995, c. 400; 2001, c. 844; 2004, c. 690; 2007, c. 232.

§ 2.2-3807. Agencies to report concerning systems operated or developed; publication of information

Every agency shall make report of the existence of any information system that it operates or develops that shall include a description of the nature of the data in the system and purpose for which it is used. An inventory listing or similar display of the information shall be made available for inspection by the general public in the office of the head of each agency. Copies of the information shall be provided upon request and a fee shall be charged for them sufficient to cover the reasonable costs of reproduction.

1976, c. 597, § 2.1-383; 1977, c. 279; 1979, c. 683; 2001, c. 844.

§ 2.2-3808. Collection, disclosure, or display of social security number

A. It shall be unlawful for any agency to:

1. Require an individual to disclose or furnish his social security number not previously disclosed or furnished, for any purpose in connection with any activity, or to refuse any service, privilege, or right to an individual wholly or partly because the individual does not disclose or furnish such number, unless the disclosure or furnishing of such number is specifically required by state law in effect prior to January 1, 1975, or is specifically authorized or required by federal law; or

2. Collect from an individual his social security number or any portion thereof unless the collection of such number is (i) authorized or required by state or federal law and (ii) essential for the performance of that agency's duties. Nothing in this subdivision shall be construed to prohibit the collection of a social security number for the sole purpose of complying with the Virginia Debt Collection Act (§ 2.2-4800 et seq.) or the Setoff Debt Collection Act (§ 58.1-520 et seq.).

B. Agency-issued identification cards, student identification cards, or license certificates issued or replaced on or after July 1, 2003, shall not display an individual's entire social security number except as provided in § 46.2-703.

C. Any agency-issued identification card, student identification card, or license certificate that was issued prior to July 1, 2003, and that displays an individual's entire social security number shall be replaced no later than July 1, 2006, except that voter registration cards issued with a social security number and not previously replaced shall be replaced no later than the December 31st following the completion by the state and all localities of the decennial redistricting following the 2010 census. This subsection shall not apply to (i) driver's licenses and special identification cards

issued by the Department of Motor Vehicles pursuant to Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 and (ii) road tax registrations issued pursuant to § 46.2-703.

D. No agency, as defined in § 42.1-77, shall send or deliver or cause to be sent or delivered, any letter, envelope, or package that displays a social security number on the face of the mailing envelope or package or from which a social security number is visible, whether on the outside or inside of the mailing envelope or package.

E. The provisions of subsections A and C shall not be applicable to licenses issued by the State Corporation Commission's Bureau of Insurance until such time as a national insurance producer identification number has been created and implemented in all states. Commencing with the date of such implementation, the licenses issued by the State Corporation Commission's Bureau of Insurance shall be issued in compliance with subsection A of this section. Further, all licenses issued prior to the date of such implementation shall be replaced no later than 12 months following the date of such implementation.

1976, c. 597, § 2.1-385; 2001, c. 844; 2003, c. 974; 2008, cc. 840, 843; 2009, cc. 849, 867; 2010, c. 749.

§ 2.2-3808.1. Agencies' disclosure of certain account information prohibited

Notwithstanding Chapter 37 (§ 2.2-3700 et seq.) of this title, it shall be unlawful for any agency to disclose the social security number or other identification numbers appearing on driver's licenses or information on credit cards, debit cards, bank accounts, or other electronic billing and payment systems that was supplied to an agency for the purpose of paying fees, fines, taxes, or other charges collected by such agency. The prohibition shall not apply where disclosure of such information is required (i) to conduct or complete the transaction for which such information was submitted or (ii) by other law or court order.

2001, c. 415, § 2.1-385.1; 2007, cc. 548, 626.

§ 2.2-3808.2. Repealed

Repealed by Acts 2007, cc. 548 and 626, cl. 5.

§ 2.2-3809. Injunctive relief; civil penalty; attorneys' fees

Any aggrieved person may institute a proceeding for injunction or mandamus against any person or agency that has engaged, is engaged, or is about to engage in any acts or practices in violation of the provisions of this chapter. The proceeding shall be brought in the district or circuit court of any county or city where the aggrieved person resides or where the agency made defendant has a place of business.

In the case of any successful proceeding by an aggrieved party, the agency enjoined or made subject to a writ of mandamus by the court shall be liable for the costs of the action together with reasonable attorneys' fees as determined by the court.

In addition, if the court finds that a violation of subsection A of § 2.2-3808 was willfully and knowingly made by a specific public officer, appointee, or employee of any agency, the court may impose upon such individual a civil penalty of not less than $250 nor more than $1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than $1,000 nor more than $2,500. For a violation of subsection A of § 2.2-3808 by any agency, the court may impose a civil penalty of not less than $250 nor more than $1,000, which amount shall be paid into the State Literary Fund. For a second or subsequent violation, such civil penalty shall be not less than $1,000 nor more than $2,500.

1976, c. 597, § 2.1-386; 2001, c. 844; 2008, cc. 840, 843.

Chapter 38.1 - PROTECTION OF SOCIAL SECURITY NUMBERS ACT

§ 2.2-3815. Access to social security numbers prohibited; exceptions

A. Except as otherwise provided in this chapter, the first five digits of a social security number contained in a public record shall be confidential and exempt from disclosure under the Freedom of Information Act (§ 2.2-3700 et seq.).

For the purposes of this chapter:

"Agency" means the same as that term is defined in § 2.2-3801, unless the context requires otherwise.

"Data subject" means the same as that term is defined in § 2.2-3801.

"Public record" means the same as that term is defined in § 2.2-3701, but shall not include any records required by law to be maintained by the clerks of the courts of record, as defined in § 1-212, or courts not of record, as defined in § 16.1-69.5.

"Regional agency" means a unit of government organized as provided by law whose members are appointed by the participating local governing bodies, and such unit includes two or more counties, cities, or towns.

B. The provisions of this section shall not be construed to prevent the release of a social security number:

1. In accordance with a proper judicial order;

2. To any federal, state or local law-enforcement or correctional personnel, including a law-enforcement officer, probation officer, parole officer or administrator, or a member of a parole board, seeking information in the course of his official duties;

3. By one agency to another agency in Virginia or to an agency in another state, district, or territory of the United States where such information is requested by such agencies in connection with (i) the application of the data subject therein for a service, privilege, or right under the laws thereof, (ii) the transmittal of information to family advocacy representatives of the United States

Armed Forces in accordance with subsection N of § 63.2-1503, or (iii) the performance of such agency's official duties;

4. To any data subject exercising his rights under § 2.2-3806, or if the data subject is less than 18 years of age, to his legal guardian or parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access;

5. To any other agency in Virginia or to a federal agency in order to comply with any applicable law or regulation; or

6. To a person or entity when necessary to administer any program of the agency, to perform a service or function of the agency, or to conduct or complete the transaction for which the social security number was submitted to the agency.

2009, c. 213.

§ 2.2-3816. Proceedings for enforcement of chapter

A. Any aggrieved person may institute a proceeding for injunction or mandamus against any agency that has engaged, is engaged, or is about to engage in any acts in violation of the provisions of this chapter. Venue for the petition shall be addressed as follows:

1. In a case involving a local agency, to the general district court or circuit court of the county or city from which the agency has been elected or appointed to serve;

2. In a case involving a regional agency, to the general district or circuit court of the county or city where the principal business office of such agency is located; and

3. In a case involving a state agency, including a public institution of higher education, to the general district court or the circuit court of the residence of the aggrieved party or of the City of Richmond.

B. If the court finds a violation of the provisions of this chapter, the petitioner shall be entitled to recover reasonable costs and attorney fees from the agency if the petitioner substantially prevails on the merits of the case, unless special circumstances would make an award unjust. In making this determination, a court may consider, among other things, the reliance of the agency on an opinion of the Attorney General or a decision of a court that substantially supports the agency's position.

2009, c. 213.

Chapter 39 - VIRGINIA HUMAN RIGHTS ACT

§ 2.2-3900. Short title; declaration of policy

A. This chapter shall be known and cited as the Virginia Human Rights Act.

B. It is the policy of the Commonwealth to:

1. Safeguard all individuals within the Commonwealth from unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability, in places of public accommodation, including educational institutions and in real estate transactions; in employment; preserve the public safety, health and general welfare; and further the interests, rights and privileges of individuals within the Commonwealth; and

2. Protect citizens of the Commonwealth against unfounded charges of unlawful discrimination.

1987, c. 581, §§ 2.1-714, 2.1-715; 1997, c. 404; 2001, c. 844.

§ 2.2-3901. Unlawful discriminatory practice and gender discrimination defined

Conduct that violates any Virginia or federal statute or regulation governing discrimination on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability shall be an "unlawful discriminatory practice" for the purposes of this chapter.

The terms "because of sex or gender" or "on the basis of sex or gender" or terms of similar import when used in reference to discrimination in the Code and acts of the General Assembly include because of or on the basis of pregnancy, childbirth or related medical conditions. Women affected by pregnancy, childbirth or related medical conditions shall be treated the same for all purposes as persons not so affected but similar in their abilities or disabilities.

1987, c. 581, § 2.1-716; 1991, c. 457; 1997, c. 404; 2001, c. 844; 2005, c. 839.

§ 2.2-3902. Construction of chapter; other programs to aid persons with disabilities, minors and the elderly

The provisions of this chapter shall be construed liberally for the accomplishment of its policies. Nothing contained in this chapter shall be deemed to repeal, supersede or expand upon any of the provisions of any other state or federal law relating to discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability.

Nothing in this chapter shall prohibit or alter any program, service, facility, school, or privilege that is afforded, oriented or restricted to a person because of disability or age from continuing to habilitate, rehabilitate, or accommodate that person.

In addition, nothing in this chapter shall be construed to affect any governmental program, law or activity differentiating between persons on the basis of age over the age of 18 years (i) where the differentiation is reasonably necessary to normal operation or the activity is based upon reasonable factors other than age or (ii) where the program, law or activity constitutes a legitimate exercise of powers of the Commonwealth for the general health, safety and welfare of the population at large.

Complaints filed with the Division of Human Rights of the Department of Law (the Division) in accordance with § 2.2-520 alleging unlawful discriminatory practice under a Virginia statute that

is enforced by a Virginia agency shall be referred to that agency. The Division may investigate complaints alleging an unlawful discriminatory practice under a federal statute or regulation and attempt to resolve it through conciliation. Unsolved complaints shall thereafter be referred to the federal agency with jurisdiction over the complaint. Upon such referral, the Division shall have no further jurisdiction over the complaint. The Division shall have no jurisdiction over any complaint filed under a local ordinance adopted pursuant to § 15.2-965.

1987, c. 581, § 2.1-717; 1991, c. 457; 1997, c. 404; 2000, c. 933; 2001, c. 844; 2012, cc. 803, 835.

§ 2.2-3903. Causes of action not created

A. Nothing in this chapter or in Article 4 (§ 2.2-520 et seq.) of Chapter 5 creates, nor shall it be construed to create, an independent or private cause of action to enforce its provisions, except as specifically provided in subsections B and C.

B. No employer employing more than five but less than 15 persons shall discharge any such employee on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, including lactation. No employer employing more than five but less than 20 persons shall discharge any such employee on the basis of age if the employee is 40 years of age or older. For the purposes of this section, "lactation" means a condition that may result in the feeding of a child directly from the breast or the expressing of milk from the breast.

C. The employee may bring an action in a general district or circuit court having jurisdiction over the employer who allegedly discharged the employee in violation of this section. Any such action shall be brought within 300 days from the date of the discharge or, if the employee has filed a complaint with the Division of Human Rights of the Department of Law or a local human rights or human relations agency or commission within 300 days of the discharge, such action shall be brought within 90 days from the date that the Division or a local human rights or human relations agency or commission has rendered a final disposition on the complaint. The court may award up to 12 months' back pay with interest at the judgment rate as provided in § 6.2-302. However, if the court finds that either party engaged in tactics to delay resolution of the complaint, it may (i) diminish the award or (ii) award back pay to the date of judgment without regard to the 12-month limitation.

In any case where the employee prevails, the court shall award attorney fees from the amount recovered, not to exceed 25 percent of the back pay awarded. The court shall not award other damages, compensatory or punitive, nor shall it order reinstatement of the employee.

D. Causes of action based upon the public policies reflected in this chapter shall be exclusively limited to those actions, procedures, and remedies, if any, afforded by applicable federal or state civil rights statutes or local ordinances. Nothing in this section or § 2.2-3900 shall be deemed to alter, supersede, or otherwise modify the authority of the Division or of any local human rights or human relations commissions established pursuant to § 15.2-853 or 15.2-965.

1987, c. 581, § 2.1-725; 1995, c. 838; 1997, c. 404; 2000, c. 933; 2001, c. 844, § 2.2-2639; 2002, c. 561; 2005, cc. 756, 770, 857; 2012, cc. 803, 835; 2014, c. 635.

Chapter 40 - ADMINISTRATIVE PROCESS ACT

Article 1 - GENERAL PROVISIONS

§ 2.2-4000. Short title; purpose

A. This chapter may be cited as the "Administrative Process Act."

B. The purpose of this chapter is to supplement present and future basic laws conferring authority on agencies either to make regulations or decide cases as well as to standardize court review thereof save as laws hereafter enacted may otherwise expressly provide. This chapter shall not supersede or repeal additional procedural requirements in such basic laws.

1975, c. 503, §§ 9-6.14:1. 9-6.14:3; 1977, c. 647; 1984, c. 5; 2001, c. 844.

§ 2.2-4001. Definitions

As used in this chapter, unless the context requires a different meaning:

"Agency" means any authority, instrumentality, officer, board or other unit of the state government empowered by the basic laws to make regulations or decide cases.

"Agency action" means either an agency's regulation or case decision or both, any violation, compliance, or noncompliance with which could be a basis for the imposition of injunctive orders, penal or civil sanctions of any kind, or the grant or denial of relief or of a license, right, or benefit by any agency or court.

"Basic law" or "basic laws" means provisions of the Constitution and statutes of the Commonwealth authorizing an agency to make regulations or decide cases or containing procedural requirements therefor.

"Case" or "case decision" means any agency proceeding or determination that, under laws or regulations at the time, a named party as a matter of past or present fact, or of threatened or contemplated private action, either is, is not, or may or may not be (i) in violation of such law or regulation or (ii) in compliance with any existing requirement for obtaining or retaining a license or other right or benefit.

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.

"Hearing" means agency processes other than those informational or factual inquiries of an informal nature provided in §§ 2.2-4007.01 and 2.2-4019 and includes only (i) opportunity for private parties to submit factual proofs in formal proceedings as provided in § 2.2-4009 in

connection with the making of regulations or (ii) a similar right of private parties or requirement of public agencies as provided in § 2.2-4020 in connection with case decisions.

"Hearing officer" means an attorney selected from a list maintained by the Executive Secretary of the Supreme Court in accordance with § 2.2-4024.

"Public assistance and social services programs" means those programs specified in § 63.2-100.

"Registrar" means the Registrar of Regulations appointed as provided in § 2.2-4102.

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws.

"Subordinate" means (i) one or more but less than a quorum of the members of a board constituting an agency, (ii) one or more of its staff members or employees, or (iii) any other person or persons designated by the agency to act in its behalf.

"Virginia Register of Regulations" means the publication issued under the provisions of Article 6 (§ 2.2-4031 et seq.).

"Virginia Regulatory Town Hall" means the website operated by the Department of Planning and Budget, which has online public comment forums and displays information about regulatory actions under consideration in the Commonwealth and sends this information to registered public users.

1975, c. 503, § 9-6.14:4; 1977, cc. 377, 381; 1979, c. 613; 1984, c. 187; 1985, cc. 67, 602; 1997, c. 11; 2001, c. 844; 2002, c. 747; 2007, cc. 873, 916; 2011, cc. 241, 315.

§ 2.2-4002. Exemptions from chapter generally

A. Although required to comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.), the following agencies shall be exempted from the provisions of this chapter, except to the extent that they are specifically made subject to §§ 2.2-4024, 2.2-4030, and 2.2-4031:

1. The General Assembly.

2. Courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

3. The Department of Game and Inland Fisheries in promulgating regulations regarding the management of wildlife and for all case decisions rendered pursuant to any provisions of Chapters 2 (§ 29.1-200 et seq.), 3 (§ 29.1-300 et seq.), 4 (§ 29.1-400 et seq.), 5 (§ 29.1-500 et seq.), and 7 (§ 29.1-700 et seq.) of Title 29.1.

4. The Virginia Housing Development Authority.

5. Municipal corporations, counties, and all local, regional or multijurisdictional authorities created under this Code, including those with federal authorities.

6. Educational institutions operated by the Commonwealth, provided that, with respect to § 2.2-4031, such educational institutions shall be exempt from the publication requirements only with respect to regulations that pertain to (i) their academic affairs, (ii) the selection, tenure, promotion and disciplining of faculty and employees, (iii) the selection of students, and (iv) rules of conduct and disciplining of students.

7. The Milk Commission in promulgating regulations regarding (i) producers' licenses and bases, (ii) classification and allocation of milk, computation of sales and shrinkage, and (iii) class prices for producers' milk, time and method of payment, butterfat testing and differential.

8. The Virginia Resources Authority.

9. Agencies expressly exempted by any other provision of this Code.

10. The Department of General Services in promulgating standards for the inspection of buildings for asbestos pursuant to § 2.2-1164.

11. (Effective until October 1, 2016) The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23-9.6:2.

11. (Effective October 1, 2016) The State Council of Higher Education for Virginia, in developing, issuing, and revising guidelines pursuant to § 23.1-207.

12. The Commissioner of Agriculture and Consumer Services in adopting regulations pursuant to subsection B of § 3.2-6002 and in adopting regulations pursuant to § 3.2-6023.

13. The Commissioner of Agriculture and Consumer Services and the Board of Agriculture and Consumer Services in promulgating regulations pursuant to subsections B and D of § 3.2-3601, subsection B of § 3.2-3701, § 3.2-4002, subsections B and D of § 3.2-4801, §§ 3.2-5121 and 3.2-5206, and subsection A of § 3.2-5406.

14. The Board of Optometry when specifying therapeutic pharmaceutical agents, treatment guidelines, and diseases and abnormal conditions of the human eye and its adnexa for TPA-certification of optometrists pursuant to Article 5 (§ 54.1-3222 et seq.) of Chapter 32 of Title 54.1.

15. The Commissioner of the Department of Veterans Services in adopting regulations pursuant to § 2.2-2001.3.

16. The State Board of Education, in developing, issuing, and revising guidelines pursuant to § 22.1-203.2.

17. The Virginia Racing Commission, (i) when acting by and through its duly appointed stewards or in matters related to any specific race meeting or (ii) in promulgating technical rules regulating actual live horse racing at race meetings licensed by the Commission.

18. The Virginia Small Business Financing Authority.

19. The Virginia Economic Development Partnership Authority.

20. The Board of Agriculture and Consumer Services in adopting, amending or repealing regulations pursuant to subsection A (ii) of § 59.1-156.

21. The Insurance Continuing Education Board pursuant to § 38.2-1867.

22. The Board of Health in promulgating the list of diseases that shall be reported to the Department of Health pursuant to § 32.1-35 and in adopting, amending or repealing regulations pursuant to subsection C of § 35.1-14 that incorporate the Food and Drug Administration's Food Code pertaining to restaurants or food service.

23. The Commissioner of the Marine Resources Commission in setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § 28.2-1000.2.

24. The Board of Pharmacy when specifying special subject requirements for continuing education for pharmacists pursuant to § 54.1-3314.1.

25. The Virginia Department of Veterans Services when promulgating rules and regulations pursuant to § 58.1-3219.7.

26. The Virginia Department of Criminal Justice Services when developing, issuing, or revising any training standards established by the Criminal Justice Services Board under § 9.1-102, provided such actions are authorized by the Governor in the interest of public safety.

B. Agency action relating to the following subjects shall be exempted from the provisions of this chapter:

1. Money or damage claims against the Commonwealth or agencies thereof.

2. The award or denial of state contracts, as well as decisions regarding compliance therewith.

3. The location, design, specifications or construction of public buildings or other facilities.

4. Grants of state or federal funds or property.

5. The chartering of corporations.

6. Customary military, militia, naval or police functions.

7. The selection, tenure, dismissal, direction or control of any officer or employee of an agency of the Commonwealth.

8. The conduct of elections or eligibility to vote.

9. Inmates of prisons or other such facilities or parolees therefrom.

10. The custody of persons in, or sought to be placed in, mental health facilities or penal or other state institutions as well as the treatment, supervision, or discharge of such persons.

11. Traffic signs, markers or control devices.

12. Instructions for application or renewal of a license, certificate, or registration required by law.

13. Content of, or rules for the conduct of, any examination required by law.

14. The administration of pools authorized by Chapter 47 (§ 2.2-4700 et seq.).

15. Any rules for the conduct of specific lottery games, so long as such rules are not inconsistent with duly adopted regulations of the Virginia Lottery Board, and provided that such regulations are published and posted.

16. Orders condemning or closing any shellfish, finfish, or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8 of Title 28.2.

17. Any operating procedures for review of child deaths developed by the State Child Fatality Review Team pursuant to § 32.1-283.1 and any operating procedures for review of adult deaths developed by the Adult Fatality Review Team pursuant to § 32.1-283.5.

18. The regulations for the implementation of the Health Practitioners' Monitoring Program and the activities of the Health Practitioners' Monitoring Program Committee pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

19. The process of reviewing and ranking grant applications submitted to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 51.5-178 et seq.) of Chapter 14 of Title 51.5.

20. Loans from the Small Business Environmental Compliance Assistance Fund pursuant to Article 4 (§ 10.1-1197.1 et seq.) of Chapter 11.1 of Title 10.1.

21. The Virginia Breeders Fund created pursuant to § 59.1-372.

22. The types of pari-mutuel wagering pools available for live or simulcast horse racing.

23. The administration of medication or other substances foreign to the natural horse.

C. Minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act (§ 2.2-4100 et seq.), made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of this chapter.

1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. 237, 577, 649, 740, 743, 801; 1995, cc. 103, 499, 516; 1996, cc. 51, 152, 158, 189, 205, 279, 320, 345, 573, 590, 598, 638, 705, 735, 818, 1012; 1997, cc. 87, 88, 109, 212, 390, 439, 567, 624, 785, 806, 845, 850, 861, 868; 1998, cc. 39, 619, 784; 1999, cc. 412, 421, 433, 603; 2000, cc. 382, 400, 924, 1011; 2001, cc. 465, 523, 688, 820, 844; 2003, cc. 639, 695; 2004, c. 802; 2006, c. 442; 2007, cc. 41, 870, 932; 2008, c. 672; 2009, c. 472; 2010, cc. 65, 178, 480, 728; 2012, cc. 476, 507, 594, 803, 835; 2013, cc. 59, 234, 760, 780; 2014, c. 225; 2015, c. 108.

§ 2.2-4003. Venue

In all proceedings under § 2.2-4019 or 2.2-4020 venue shall be in the city or county where the administrative agency maintains its principal office or as the parties may otherwise agree. In all proceedings under § 2.2-4026, venue shall be as specified in subdivision 1 of § 8.01-261.

1975, c. 503, § 9-6.14:5; 1977, c. 624; 2001, c. 844; 2007, cc. 873, 916.

§ 2.2-4004. Severability

The provisions of regulations adopted under this chapter or the application thereof to any person or circumstances that are held invalid shall not affect the validity of other regulations, provisions or applications that can be given effect without the invalid provisions or applications. The provisions of all regulations are severable unless (i) the regulation specifically provides that its provisions are not severable or (ii) it is apparent that two or more regulations or provisions must operate in accord with one another.

1987, c. 55, § 9-6.14:5.1; 2001, c. 844.

§ 2.2-4005. Review of exemptions by Joint Legislative Audit and Review Commission

The Joint Legislative Audit and Review Commission shall conduct a review periodically of the exemptions authorized by this chapter. The purpose of this review shall be to assess whether there are any exemptions that should be discontinued or modified.

1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. 237, 577, 649, 740, 743, 801; 1995, cc. 103, 499, 516; 1996, cc. 51, 152, 158, 189, 205, 279, 320, 345, 573, 590, 598, 638, 705, 735, 818, 1012; 1997, cc. 87, 88, 109, 212, 390, 439, 567, 624, 785, 806, 845, 850, 861, 868; 1998, cc. 39, 619, 784; 1999, cc. 412, 421, 433, 603; 2000, cc. 382, 400, 924, 1011; 2001, c. 844.

Article 2 - REGULATIONS

§ 2.2-4006. Exemptions from requirements of this article

A. The following agency actions otherwise subject to this chapter and § 2.2-4103 of the Virginia Register Act shall be exempted from the operation of this article:

1. Agency orders or regulations fixing rates or prices.

2. Regulations that establish or prescribe agency organization, internal practice or procedures, including delegations of authority.

3. Regulations that consist only of changes in style or form or corrections of technical errors. Each promulgating agency shall review all references to sections of the Code of Virginia within their regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed.

4. Regulations that are:

a. Necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved. However, such regulations shall be filed with the Registrar within 90 days of the law's effective date;

b. Required by order of any state or federal court of competent jurisdiction where no agency discretion is involved; or

c. Necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation, and the Registrar has so determined in writing. Notice of the proposed adoption of these regulations and the Registrar's determination shall be published in the Virginia Register not less than 30 days prior to the effective date of the regulation.

5. Regulations of the Board of Agriculture and Consumer Services adopted pursuant to subsection B of § 3.2-3929 or clause (v) or (vi) of subsection C of § 3.2-3931 after having been considered at two or more Board meetings and one public hearing.

6. Regulations of the regulatory boards served by (i) the Department of Labor and Industry pursuant to Title 40.1 and (ii) the Department of Professional and Occupational Regulation or the Department of Health Professions pursuant to Title 54.1 that are limited to reducing fees charged to regulants and applicants.

7. The development and issuance of procedural policy relating to risk-based mine inspections by the Department of Mines, Minerals and Energy authorized pursuant to §§ 45.1-161.82 and 45.1-161.292:55.

8. General permits issued by the (a) State Air Pollution Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 or (b) State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1 and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1, (c) Virginia Soil and Water Conservation Board pursuant to the Dam Safety Act (§ 10.1-604 et seq.), and (d) the development and issuance of general wetlands permits by the Marine Resources Commission pursuant to subsection B of § 28.2-1307, if the respective Board or Commission (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit, (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03, and (iv) conducts at least one public hearing on the proposed general permit.

9. The development and issuance by the Board of Education of guidelines on constitutional rights and restrictions relating to the recitation of the pledge of allegiance to the American flag in public schools pursuant to § 22.1-202.

10. (Effective until October 1, 2016) Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23-38.77.

10. (Effective October 1, 2016) Regulations of the Board of the Virginia College Savings Plan adopted pursuant to § 23.1-704.

11. Regulations of the Marine Resources Commission.

12. Regulations adopted by the Board of Housing and Community Development pursuant to (i) Statewide Fire Prevention Code (§ 27-94 et seq.), (ii) the Industrialized Building Safety Law (§ 36-70 et seq.), (iii) the Uniform Statewide Building Code (§ 36-97 et seq.), and (iv) § 36-98.3, provided the Board (a) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01, (b) publishes the proposed regulation and provides an opportunity for oral and written comments as provided in § 2.2-4007.03, and (c) conducts at least one public hearing as provided in §§ 2.2-4009 and 36-100 prior to the publishing of the proposed regulations. Notwithstanding the provisions of this subdivision, any regulations promulgated by the Board shall remain subject to the provisions of § 2.2-4007.06 concerning public petitions, and §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

13. Amendments to regulations of the Board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443.

14. Waste load allocations adopted, amended, or repealed by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), including but not limited to Article 4.01 (§ 62.1-44.19:4 et seq.) of the State Water Control Law, if the Board (i) provides public notice in the Virginia Register; (ii) if requested by the public during the initial public notice 30-day comment period, forms an advisory group composed of relevant stakeholders; (iii) receives and provides summary response to written comments; and (iv) conducts at least one public meeting. Notwithstanding the provisions of this subdivision, any such waste load allocations adopted, amended, or repealed by the Board shall be subject to the provisions of §§ 2.2-4013 and 2.2-4014 concerning review by the Governor and General Assembly.

15. Regulations of the Workers' Compensation Commission adopted pursuant to § 65.2-605, including regulations that adopt, amend, adjust, or repeal Virginia fee schedules for medical services, provided the Workers' Compensation Commission (i) utilizes a regulatory advisory panel constituted as provided in subdivision F 2 of § 65.2-605 to assist in the development of such regulations and (ii) provides an opportunity for public comment on the regulations prior to adoption.

B. Whenever regulations are adopted under this section, the agency shall state as part thereof that it will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision. The effective date of regulations adopted under this section shall be in accordance with the provisions of § 2.2-4015, except in the case of emergency regulations, which shall become effective as provided in subsection B of § 2.2-4012.

C. A regulation for which an exemption is claimed under this section or § 2.2-4002 or 2.2-4011 and that is placed before a board or commission for consideration shall be provided at least two days in advance of the board or commission meeting to members of the public that request a copy of that regulation. A copy of that regulation shall be made available to the public attending such meeting.

1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. 237, 577, 649, 740, 743, 801; 1995, cc. 103, 499, 516; 1996, cc. 51, 152, 158, 189, 205, 279, 320, 345, 573, 590, 598, 638, 705, 735, 818, 1012; 1997, cc. 87, 88, 109, 212, 390, 439, 567, 624, 785, 806, 845, 850, 861, 868; 1998, cc. 39, 619, 784; 1999, cc. 412, 421, 433, 603; 2000, cc. 382, 400, 924, 1011; 2001, c. 844; 2003, c. 436; 2005, c. 102; 2006, cc. 632, 719; 2007, cc. 873, 916; 2010, c. 65; 2011, c. 464; 2012, cc. 803, 835; 2013, cc. 756, 793; 2014, cc. 202, 674, 719; 2016, cc. 221, 279, 290.

§ 2.2-4007. Petitions for new or amended regulations; opportunity for public comment

A. Any person may petition an agency to request the agency to develop a new regulation or amend an existing regulation. The petition shall state (i) the substance and purpose of the rulemaking that is requested, including reference to any applicable Virginia Administrative Code sections, and (ii) reference to the legal authority of the agency to take the action requested.

B. Within 14 days of receiving a petition, the agency shall send a notice identifying the petitioner, the nature of the petitioner's request and the agency's plan for disposition of the petition to the Registrar for publication in the Virginia Register of Regulations in accordance with the provisions of subsection B of § 2.2-4031.

C. A 21-day period for acceptance of written public comment on the petition shall be provided after publication in the Virginia Register. The agency shall issue a written decision to grant or deny the petitioner's request within 90 days following the close of the comment period. However, if the rulemaking authority is vested in an entity that has not met within that 90-day period, the entity shall issue a written decision no later than 14 days after it next meets. The written decision issued by the agency shall include a statement of its reasons and shall be submitted to the Registrar for publication in the Virginia Register of Regulations. Agency decisions to initiate or not initiate rulemaking in response to petitions shall not be subject to judicial review.

1984, c. 5, § 9-6.14:7.1; 1985, c. 602; 1989, c. 71; 1991, c. 488; 1993, cc. 898, 944; 1994, c. 938; 1995, cc. 25, 677, 717, 790; 1997, c. 87; 2001, c. 844; 2002, cc. 241, 391, 747; 2003, c. 224; 2005, cc. 619, 682; 2007, cc. 873, 916.

§ 2.2-4007.01. Notice of intended regulatory action; public hearing

A. In the case of all regulations, except those regulations exempted by § 2.2-4002, 2.2-4006, 2.2-4011, or 2.2-4012.1, an agency shall (i) provide the Registrar of Regulations with a Notice of Intended Regulatory Action that describes the subject matter and intent of the planned regulation and

(ii) allow at least 30 days for public comment, to include an on-line public comment forum on the Virginia Regulatory Town Hall, after publication of the Notice of Intended Regulatory Action.

Whenever a Virginia statutory change necessitates a change to, or repeal of, all or a portion of a regulation or the adoption of a new regulation, the agency shall file a Notice of Intended Regulatory Action with the Registrar within 120 days of such law's effective date.

An agency shall not file proposed regulations with the Registrar until the public comment period on the Notice of Intended Regulatory Action has closed.

B. Agencies shall state in the Notice of Intended Regulatory Action whether they plan to hold a public hearing on the proposed regulation after it is published. Agencies shall hold such public hearings if required by basic law. If the agency states an intent to hold a public hearing on the proposed regulation in the Notice of Intended Regulatory Action, then it shall hold the public hearing. If the agency states in its Notice of Intended Regulatory Action that it does not plan to hold a hearing on the proposed regulation, then no public hearing is required unless, prior to completion of the comment period specified in the Notice of Intended Regulatory Action, (i) the Governor directs the agency to hold a public hearing or (ii) the agency receives requests for a public hearing from at least 25 persons.

2007, cc. 873, 916; 2011, c. 464.

§ 2.2-4007.02. Public participation guidelines

A. Public participation guidelines for soliciting the input of interested parties in the formation and development of its regulations shall be developed, adopted, and used by each agency pursuant to the provisions of this chapter. The guidelines shall set out any methods for the identification and notification of interested parties and any specific means of seeking input from interested persons or groups that the agency intends to use in addition to the Notice of Intended Regulatory Action. The guidelines shall set out a general policy for the use of standing or ad hoc advisory panels and consultation with groups and individuals registering interest in working with the agency. Such policy shall address the circumstances in which the agency considers the panels or consultation appropriate and intends to make use of the panels or consultation.

B. In formulating any regulation, including but not limited to those in public assistance and social services programs, the agency pursuant to its public participation guidelines shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency, to include an online public comment forum on the Virginia Regulatory Town Hall, or other specially designated subordinate and (ii) be accompanied by and represented by counsel or other representative. However, the agency may begin drafting the proposed regulation prior to or during any opportunities it provides to the public to submit comments.

2007, cc. 873, 916; 2012, c. 795.

§ 2.2-4007.03. Informational proceedings; effect of noncompliance

A. In the case of all regulations, except those regulations exempted by § 2.2-4002, 2.2-4006, or 2.2-4011, the proposed regulation and general notice of opportunity for oral or written submittals as to that regulation shall be posted on the Virginia Regulatory Town Hall and published in the Virginia Register of Regulations in accordance with the provisions of subsection B of § 2.2-4031. In addition, the agency may, in its discretion, (i) publish the notice in any newspaper and (ii) publicize the notice through press releases and such other media as will best serve the purpose and subject involved. The Register and any newspaper publication shall be made at least 60 days in advance of the last date prescribed in the notice for such submittals. All notices, written submittals, and transcripts and summaries or notations of oral presentations, as well as any agency action thereon, shall be matters of public record in the custody of the agency.

B. If an agency wishes to change a proposed regulation before adopting it as a final regulation, it may choose to publish a revised proposed regulation, provided the latter is subject to a public comment period of at least 30 additional days and the agency complies in all other respects with this section.

C. In no event shall the failure to comply with the requirements of this section be deemed mere harmless error for the purposes of § 2.2-4027.

2007, cc. 873, 916.

§ 2.2-4007.04. Economic impact analysis

A. Before delivering any proposed regulation under consideration to the Registrar as required in § 2.2-4007.05, the agency shall submit on the Virginia Regulatory Town Hall a copy of that regulation to the Department of Planning and Budget. In addition to determining the public benefit, the Department of Planning and Budget in coordination with the agency shall, within 45 days, prepare an economic impact analysis of the proposed regulation, as follows:

1. The economic impact analysis shall include but need not be limited to the projected number of businesses or other entities to whom the regulation would apply; the identity of any localities and types of businesses or other entities particularly affected by the regulation; the projected number of persons and employment positions to be affected; the impact of the regulation on the use and value of private property, including additional costs related to the development of real estate for commercial or residential purposes; and the projected costs to affected businesses, localities, or entities of implementing or complying with the regulations, including the estimated fiscal impact on such localities and sources of potential funds to implement and comply with such regulation. A copy of the economic impact analysis shall be provided to the Joint Commission on Administrative Rules;

2. If the regulation may have an adverse effect on small businesses, the economic impact analysis shall also include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills

necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. As used in this subdivision, "small business" has the same meaning as provided in subsection A of § 2.2-4007.1; and

3. In the event the Department cannot complete an economic impact statement within the 45-day period, it shall advise the agency and the Joint Commission on Administrative Rules as to the reasons for the delay. In no event shall the delay exceed 30 days beyond the original 45-day period.

B. Agencies shall provide the Department with such estimated fiscal impacts on localities and sources of potential funds. The Department may request the assistance of any other agency in preparing the analysis. The Department shall deliver a copy of the analysis to the agency drafting the regulation, which shall comment thereon as provided in § 2.2-4007.05, a copy to the Registrar for publication with the proposed regulation, and an electronic copy to each member of the General Assembly. No regulation shall be promulgated for consideration pursuant to § 2.2-4007.05 until the impact analysis has been received by the Registrar. For purposes of this section, the term "locality, business, or entity particularly affected" means any locality, business, or entity that bears any identified disproportionate material impact that would not be experienced by other localities, businesses, or entities. The analysis shall represent the Department's best estimate for the purposes of public review and comment on the proposed regulation. The accuracy of the estimate shall in no way affect the validity of the regulation, nor shall any failure to comply with or otherwise follow the procedures set forth in this subsection create any cause of action or provide standing for any person under Article 5 (§ 2.2-4025 et seq.) or otherwise to challenge the actions of the Department hereunder or the action of the agency in adopting the proposed regulation.

C. In the event the economic impact analysis completed by the Department reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period. The Joint Commission on Administrative Rules shall review such rule or regulation and issue a statement containing the Commission's findings in accordance with § 30-73.3.

2007, cc. 316, 561, 873, 916; 2015, c. 608.

§ 2.2-4007.05. Submission of proposed regulations to the Registrar

Before promulgating any regulation under consideration, the agency shall deliver a copy of that regulation to the Registrar together with a summary of the regulation and a separate and concise statement of (i) the basis of the regulation, defined as the statutory authority for promulgating the regulation, including an identification of the section number and a brief statement relating the content of the statutory authority to the specific regulation proposed; (ii) the purpose of the regulation, defined as the rationale or justification for the new provisions of the regulation, from the

standpoint of the public's health, safety, or welfare; (iii) the substance of the regulation, defined as the identification and explanation of the key provisions of the regulation that make changes to the current status of the law; (iv) the issues of the regulation, defined as the primary advantages and disadvantages for the public, and as applicable for the agency or the state, of implementing the new regulatory provisions; and (v) the agency's response to the economic impact analysis submitted by the Department of Planning and Budget pursuant to § 2.2-4007.04. Any economic impact estimate included in the agency's response shall represent the agency's best estimate for the purposes of public review and comment, but the accuracy of the estimate shall in no way affect the validity of the regulation. Staff as designated by the Code Commission shall review proposed regulation submission packages to ensure that the requirements of this subsection are met prior to publication of the proposed regulation in the Register. The summary; the statement of the basis, purpose, substance, and issues; the economic impact analysis; and the agency's response shall be published in the Virginia Register of Regulations and be available on the Virginia Regulatory Town Hall, together with the notice of opportunity for oral or written submittals on the proposed regulation.

2007, cc. 873, 916.

§ 2.2-4007.06. Changes between proposed and final regulations

If one or more changes with substantial impact are made to a proposed regulation from the time that it is published as a proposed regulation to the time it is published as a final regulation, any person may petition the agency within 30 days from the publication of the final regulation to request an opportunity for oral and written submittals on the changes to the regulation. If the agency receives requests from at least 25 persons for an opportunity to submit oral and written comments on the changes to the regulation, the agency shall (i) suspend the regulatory process for 30 days to solicit additional public comment and (ii) file notice of the additional 30-day public comment period with the Registrar of Regulations, unless the agency determines that the changes made are minor or inconsequential in their impact. The comment period, if any, shall begin on the date of publication of the notice in the Register. Agency denial of petitions for a comment period on changes to the regulation shall be subject to judicial review.

2007, cc. 873, 916.

§ 2.2-4007.07. State Air Pollution Control Board; variances

The provisions of §§ 2.2-4007 through 2.2-4007.06 shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

2007, cc. 873, 916.

§ 2.2-4007.1. Regulatory flexibility for small businesses; periodic review of regulations

A. As used in this section, "small business" means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million.

B. In addition to the requirements of §§ 2.2-4007 through 2.2-4007.06, prior to the adoption of any proposed regulation, the agency proposing a regulation shall prepare a regulatory flexibility analysis in which the agency shall consider utilizing alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small businesses. The agency shall consider, at a minimum, each of the following methods of reducing the effects of the proposed regulation on small businesses:

1. The establishment of less stringent compliance or reporting requirements;

2. The establishment of less stringent schedules or deadlines for compliance or reporting requirements;

3. The consolidation or simplification of compliance or reporting requirements;

4. The establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

5. The exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

C. Prior to the adoption of any proposed regulation that may have an adverse effect on small businesses, each agency shall notify the Joint Commission on Administrative Rules, through the Virginia Regulatory Town Hall, of its intent to adopt the proposed regulation. The Joint Commission on Administrative Rules shall advise and assist agencies in complying with the provisions of this section.

D. In addition to other requirements of § 2.2-4017, all regulations shall be reviewed every four years to determine whether they should be continued without change or be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact on small businesses in a manner consistent with the stated objectives of applicable law. When a regulation has undergone a comprehensive review as part of a regulatory action that included the solicitation of public comment on the regulation, a periodic review shall not be required until four years after the effective date of the regulatory action.

E. The regulatory review required by this section shall include consideration of:

1. The continued need for the rule;

2. The nature of complaints or comments received concerning the regulation from the public;

3. The complexity of the regulation;

4. The extent to which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and

5. The length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

F. Prior to commencement of the regulatory review required by subsection D, the agency shall publish a notice of the review in the Virginia Register of Regulations and post the notice on the Virginia Regulatory Town Hall. The agency shall provide a minimum of 21 days for public comment after publication of the notice. No later than 120 days after close of the public comment period, the agency shall publish a report of the findings of the regulatory review in the Virginia Register of Regulations and post the report on the Virginia Regulatory Town Hall.

2005, cc. 619, 682; 2007, cc. 873, 916; 2011, cc. 241, 315.

§ 2.2-4007.2. Regulations requiring the submission of documents or payments

A. On or after January 1, 2010, each agency having regulations promulgated in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that require the submission of documents or payments, including fees and fines, shall (i) examine such regulations to determine whether the submission of the required documents or payments may be accomplished by electronic means, and (ii) if so, consider amending the regulation that is being promulgated to offer the alternative of submitting the documents or payments by electronic means. If an agency chooses to amend the regulation to provide the alternative of submitting required documents or payments by electronic means, such action shall be exempt from the operation of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 provided the amended regulation is (a) adopted by December 31, 2010, and (b) consistent with federal and state law and regulations.

B. Nothing in this section shall be construed to create an independent or private cause of action to enforce its provisions.

C. Unless otherwise exempt, any amendments to an agency's regulations pursuant to this section made after December 31, 2010, shall be subject to the requirements of the Administrative Process Act (§ 2.2-4000 et seq.).

D. For the purposes of this section,

"Agency" and "regulations" mean the same as those terms are defined in § 2.2-4001.

"Electronic" means the same as that term is defined in § 59.1-480.

2009, cc. 85, 624.

§ 2.2-4008. Availability of guidance documents

It shall be the duty of every agency to annually file with the Registrar for publication in the Virginia Register of Regulations a list of any guidance documents upon which the agency currently relies. The filing shall be made on or before January 1 of each year in a format to be developed by the Registrar. Each agency shall also (i) maintain a complete list of all of its currently operative guidance documents and make the list available for public inspection, (ii) make available for public inspection the full texts of all guidance documents to the extent inspection is permitted by law, and (iii) upon request, make copies of such lists or guidance documents available without charge, at cost, or on payment of a reasonable fee.

1997, c. 11, § 9-6.14:7.2; 2001, c. 844.

§ 2.2-4009. Evidentiary hearings on regulations

Where an agency proposes to consider the exercise of authority to promulgate a regulation, it may conduct or give interested persons an opportunity to participate in a public evidentiary proceeding; and the agency shall always do so where the basic law requires a hearing. Evidentiary hearings may be limited to the trial of factual issues directly related to the legal validity of the proposed regulation in any of the relevant respects outlined in § 2.2-4027.

General notice of the proceedings shall be published as prescribed in § 2.2-4007.03. In addition, where the proposed regulation is to be addressed to named persons, the latter shall (i) also be given the same notice individually by mail or otherwise if acknowledged in writing and (ii) be entitled to be accompanied by and represented by counsel or other representative. The proceedings may be conducted separately from, and in any event the record thereof shall be separate from, any other or additional proceedings the agency may choose or be required to conduct for the reception of general data, views, and argument pursuant to § 2.2-4007.02 or otherwise. Any probative evidence may be received except that the agency shall as a matter of efficiency exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, and may deny rebuttal, or cross-examination. Testimony may be admitted in written form provided those who have prepared it are made available for examination in person.

The agency or one or more of its subordinates specially designated for the purpose shall preside at the taking of evidence and may administer oaths and affirmations. The proceedings shall be recorded verbatim and the record thereof shall be made available to interested persons for transcription at their expense or, if transcribed by or for the agency, for inspection or purchase at cost.

Where subordinates preside at the taking of the evidence, they shall report their recommendations and proposed findings and conclusions that shall be made available upon request to the participants in the taking of evidence as well as other interested persons and serve as a basis for exceptions, briefs, or oral argument to the agency itself. Whether or not subordinates take the evidence, after opportunity for the submittal of briefs on request and such oral argument as may be scheduled, the agency may settle the terms of the regulation and shall promulgate it only upon (a) its findings of fact based upon the record of evidence made pursuant to this section and facts of which judicial notice may be taken, (b) statements of basis and purpose as well as comment upon data received in any informational proceedings held under § 2.2-4007.03 and (c) the conclusions required by the terms of the basic law under which the agency is operating.

1975, c. 503, § 9-6.14:8; 1985, c. 602; 2001, c. 844; 2007, cc. 873, 916; 2012, c. 795.

§ 2.2-4010. Pilot programs for regulations imposing local government mandates

Where an agency proposes to consider the exercise of authority to promulgate a regulation that will impose a statewide mandate on the Commonwealth's localities, the agency shall consider, where appropriate, implementing the regulation on a limited basis with a representative number

of localities. An agency may use such a pilot program to determine the effectiveness or impact of proposed regulations prior to statewide adoption.

1993, c. 168, § 9-6.14:8.1; 2001, c. 844.

§ 2.2-4011. Emergency regulations; publication; exceptions

A. Regulations that an agency finds are necessitated by an emergency situation may be adopted by an agency upon consultation with the Attorney General, which approval shall be granted only after the agency has submitted a request stating in writing the nature of the emergency, and the necessity for such action shall be at the sole discretion of the Governor.

B. Agencies may also adopt emergency regulations in situations in which Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment and the regulation is not exempt under the provisions of subdivision A 4 of § 2.2-4006. In such cases, the agency shall state in writing the nature of the emergency and of the necessity for such action and may adopt the regulations. Pursuant to § 2.2-4012, such regulations shall become effective upon approval by the Governor and filing with the Registrar of Regulations.

C. All emergency regulations shall be limited to no more than 18 months in duration. During the 18-month period, an agency may issue additional emergency regulations as needed addressing the subject matter of the initial emergency regulation, but any such additional emergency regulations shall not be effective beyond the 18-month period from the effective date of the initial emergency regulation. If the agency wishes to continue regulating the subject matter governed by the emergency regulation beyond the 18-month limitation, a regulation to replace the emergency regulation shall be promulgated in accordance with this article. The Notice of Intended Regulatory Action to promulgate a replacement regulation shall be filed with the Registrar within 60 days of the effective date of the emergency regulation and published as soon as practicable, and the proposed replacement regulation shall be filed with the Registrar within 180 days after the effective date of the emergency regulation and published as soon as practicable.

D. In the event that an agency concludes that despite its best efforts a replacement regulation cannot be adopted before expiration of the 18-month period described in subsection C, it may seek the prior written approval of the Governor to extend the duration of the emergency regulation for a period of not more than six additional months. Any such request must be submitted to the Governor at least 30 days prior to the scheduled expiration of the emergency regulation and shall include a description of the agency's efforts to adopt a replacement regulation together with the reasons that a replacement regulation cannot be adopted before the scheduled expiration of the emergency regulation. Upon approval of the Governor, provided such approval occurs prior to the scheduled expiration of the emergency regulation, the duration of the emergency regulation shall be extended for a period of no more than six months. Such approval shall be in the sole discretion

of the Governor and shall not be subject to judicial review. Agencies shall notify the Registrar of Regulations of the new expiration date of the emergency regulation as soon as practicable.

E. Emergency regulations shall be published as soon as practicable in the Register.

F. The Regulations of the Marine Resources Commission shall be excluded from the provisions of this section.

1975, c. 503, § 9-6.14:9; 1977, cc. 450, 459; 1981, c. 387; 1982, c. 425; 1983, c. 295; 1984, c. 5; 1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 71, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793, 829; 1993, cc. 537, 669, 898; 1994, cc. 237, 577, 649, 740, 743, 801, 938; 1995, cc. 103, 499, 516; 1996, cc. 51, 152, 158, 189, 205, 279, 320, 345, 573, 590, 598, 638, 705, 735, 818, 1012; 1997, cc. 87, 88, 109, 212, 390, 439, 567, 624, 785, 806, 845, 850, 861, 868; 1998, cc. 39, 619, 784; 1999, cc. 412, 421, 433, 603; 2000, cc. 382, 400, 924, 1011; 2001, c. 844; 2007, cc. 873, 916; 2013, c. 629.

§ 2.2-4012. Purpose; adoption; effective date; filing; duties of Registrar of Regulations

A. The purpose of the regulatory procedures shall be to provide a regulatory plan that is predictable, based on measurable and anticipated outcomes, and is inclined toward conflict resolution.

B. Subject to the provisions of §§ 2.2-4013 and 2.2-4014, all regulations, including those that agencies, pursuant to § 2.2-4002, 2.2-4006, or 2.2-4011, may elect to dispense with the public procedures provided by §§ 2.2-4007.01 and 2.2-4009, may be formally and finally adopted by the signed order of the agency so stating. No regulation except an emergency regulation or a noncontroversial regulation promulgated pursuant to § 2.2-4012.1 shall be effective until the expiration of the applicable period as provided in § 2.2-4015. In the case of an emergency regulation filed in accordance with § 2.2-4011, the regulation shall become effective upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. The originals of all regulations shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies. They, or facsimiles thereof, shall be made available for public inspection or copying. Full and true copies shall also be additionally filed, registered, published, or otherwise made publicly available as required by other laws.

C. Prior to the publication for hearing of a proposed regulation, copies of the regulation and copies of the summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget and the agency's response thereto as required by § 2.2-4007.04 shall be transmitted to the Registrar of Regulations, who shall retain these documents.

D. All regulations adopted pursuant to this chapter shall contain a citation to the section of the Code of Virginia that authorizes or requires the regulations and, where the regulations are

required to conform to federal law or regulation in order to be valid, a citation to the specific federal law or regulation to which conformity is required.

E. Immediately upon the adoption by any agency of any regulation in final form, a copy of (i) the regulation, (ii) a then current summary and statement as to the basis, purpose, substance, issues, and the economic impact estimate of the regulation submitted by the Department of Planning and Budget, and (iii) the agency's summary description of the nature of the oral and written data, views, or arguments presented during the public proceedings and the agency's comments thereon shall be transmitted to the Registrar of Regulations, who shall retain these documents as permanent records and make them available for public inspection. A draft of the agency's summary description of public comment shall be sent by the agency to all public commenters on the proposed regulation at least five days before final adoption of the regulation.

1975, c. 503, § 9-6.14:9; 1977, cc. 450, 459; 1981, c. 387; 1982, c. 425; 1983, c. 295; 1984, c. 5; 1989, c. 71; 1992, c. 829; 1993, c. 898; 1994, c. 938; 2001, c. 844; 2003, c. 224; 2007, cc. 873, 916.

§ 2.2-4012.1. Fast-track rulemaking process

Notwithstanding any other provision, rules that are expected to be noncontroversial may be promulgated or repealed in accordance with the process set out in this section. Upon the concurrence of the Governor, and after written notice to the applicable standing committees of the Senate of Virginia and the House of Delegates, and to the Joint Commission on Administrative Rules, the agency may submit a fast-track regulation without having previously published a Notice of Intended Regulatory Action. The fast-track regulation shall be published in the Virginia Register of Regulations and posted on the Virginia Regulatory Town Hall, along with an agency statement setting out the reasons for using the fast-track rulemaking process. Such regulations shall be subject to the requirements set out in §§ 2.2-4007.03, 2.2-4007.04, and 2.2-4007.05, except that the time for receiving public comment need not exceed 30 days after (i) publication of the regulation in the Virginia Register of Regulations and (ii) a public comment forum opens on the Virginia Regulatory Town Hall. The time for preparation of the economic impact analysis shall not exceed 30 days. If an objection to the use of the fast-track process is received within the public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall (i) file notice of the objection with the Registrar of Regulations for publication in the Virginia Register, and (ii) proceed with the normal promulgation process set out in this article with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action. Otherwise, the regulation will become effective or shall be repealed as appropriate, 15 days after the close of the comment period, unless the regulation or repeal is withdrawn or a later effective date is specified by the agency.

2003, c. 224; 2007, cc. 873, 916.

§ 2.2-4013. Executive review of proposed and final regulations; changes with substantial impact

A. The Governor shall adopt and publish procedures by executive order for review of all proposed regulations governed by this chapter by June 30 of the year in which the Governor takes office. The procedures shall include (i) review by the Attorney General to ensure statutory authority for the proposed regulations; and (ii) examination by the Governor to determine if the proposed regulations are (a) necessary to protect the public health, safety and welfare and (b) clearly written and easily understandable. The procedures may also include review of the proposed regulation by the appropriate Cabinet Secretary.

The Governor shall transmit his comments, if any, on a proposed regulation to the Registrar and the agency no later than fifteen days following the completion of the public comment period provided for in § 2.2-4007.03. The Governor may recommend amendments or modifications to any regulation that would bring that regulation into conformity with statutory authority or state or federal laws, regulations or judicial decisions.

Not less than fifteen days following the completion of the public comment period provided for in § 2.2-4007.03, the agency may (i) adopt the proposed regulation if the Governor has no objection to the regulation; (ii) modify and adopt the proposed regulation after considering and incorporating the Governor's objections or suggestions, if any; or (iii) adopt the regulation without changes despite the Governor's recommendations for change.

B. Upon final adoption of the regulation, the agency shall forward a copy of the regulation to the Registrar of Regulations for publication as soon as practicable in the Register. All changes to the proposed regulation shall be highlighted in the final regulation, and substantial changes to the proposed regulation shall be explained in the final regulation.

C. If the Governor finds that one or more changes with substantial impact have been made to the proposed regulation, he may require the agency to provide an additional thirty days to solicit additional public comment on the changes by transmitting notice of the additional public comment period to the agency and to the Registrar within the 30-day final adoption period described in subsection D, and publishing the notice in the Register. The additional public comment period required by the Governor shall begin upon publication of the notice in the Register.

D. A 30-day final adoption period for regulations shall commence upon the publication of the final regulation in the Register. The Governor may review the final regulation during this 30-day final adoption period and if he objects to any portion or all of a regulation, the Governor may file a formal objection to the regulation, suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014, or both.

If the Governor files a formal objection to the regulation, he shall forward his objections to the Registrar and agency prior to the conclusion of the 30-day final adoption period. The Governor shall be deemed to have acquiesced to a promulgated regulation if he fails to object to it or if he

fails to suspend the effective date of the regulation in accordance with subsection B of § 2.2-4014. The Governor's objection, or the suspension of the regulation, or both if applicable, shall be published in the Register.

A regulation shall become effective as provided in § 2.2-4015.

E. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

1984, c. 5, § 9-6.14:9.1; 1993, cc. 551, 772, 898; 1995, cc. 25, 736; 2001, c. 844; 2007, cc. 873, 916; 2015, cc. 29, 450.

§ 2.2-4014. Legislative review of proposed and final regulations

A. After publication of the Register pursuant to § 2.2-4031, the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable or the Joint Commission on Administrative Rules may meet and, during the promulgation or final adoption process, file with the Registrar and the promulgating agency an objection to a proposed or final adopted regulation. The Registrar shall publish any such objection received by him as soon as practicable in the Register. Within 21 days after the receipt by the promulgating agency of a legislative objection, that agency shall file a response with the Registrar, the objecting legislative committee or the Joint Commission on Administrative Rules, and the Governor. If a legislative objection is filed within the final adoption period, subdivision A 1 of § 2.2-4015 shall govern.

B. In addition or as an alternative to the provisions of subsection A, the standing committee of both houses of the General Assembly to which matters relating to the content are most properly referable or the Joint Commission on Administrative Rules may suspend the effective date of any portion or all of a final regulation with the Governor's concurrence. The Governor and (i) the applicable standing committee of each house or (ii) the Joint Commission on Administrative Rules may direct, through a statement signed by a majority of their respective members and by the Governor, that the effective date of a portion or all of the final regulation is suspended and shall not take effect until the end of the next regular legislative session. This statement shall be transmitted to the promulgating agency and the Registrar within the 30-day final adoption period, or if a later effective date is specified by the agency the statement may be transmitted at any time prior to the specified later effective date, and shall be published in the Register.

If a bill is passed at the next regular legislative session to nullify a portion but not all of the regulation, then the promulgating agency (i) may promulgate the regulation under the provision of subdivision A 4 a of § 2.2-4006, if it makes no changes to the regulation other than those required by statutory law or (ii) shall follow the provisions of §§ 2.2-4007.01 through 2.2-4007.06, if it wishes to also make discretionary changes to the regulation. If a bill to nullify all or a portion of the suspended regulation, or to modify the statutory authority for the regulation, is not passed at

the next regular legislative session, then the suspended regulation shall become effective at the conclusion of the session, unless the suspended regulation is withdrawn by the agency.

C. A regulation shall become effective as provided in § 2.2-4015.

D. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

1984, c. 5, § 9-6.14:9.2; 1993, cc. 551, 772; 2001, c. 844; 2002, c. 677; 2003, c. 212; 2004, c. 777; 2007, cc. 873, 916; 2015, cc. 29, 450.

§ 2.2-4015. Effective date of regulation; exception

A. A regulation adopted in accordance with this chapter and the Virginia Register Act (§ 2.2-4100 et seq.) shall become effective at the conclusion of the thirty-day final adoption period provided for in subsection D of § 2.2-4013, or any other later date specified by the agency, unless:

1. A legislative objection has been filed in accordance with § 2.2-4014, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the expiration of the applicable twenty-one-day extension period provided in § 2.2-4014;

2. The Governor has exercised his authority in accordance with § 2.2-4013 to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn by the agency, shall become effective on a date specified by the agency that shall be after the period for which the Governor has provided for additional public comment;

3. The Governor and (i) the appropriate standing committees of each house of the General Assembly or (ii) the Joint Commission on Administrative Rules have exercised their authority in accordance with subsection B of § 2.2-4014 to suspend the effective date of a regulation until the end of the next regular legislative session; or

4. The agency has suspended the regulatory process in accordance with § 2.2-4007.06, or for any reason it deems necessary or appropriate, in which event the regulation, unless withdrawn by the agency, shall become effective in accordance with subsection B.

B. Whenever the regulatory process has been suspended for any reason, any action by the agency that either amends the regulation or does not amend the regulation but specifies a new effective date shall be considered a readoption of the regulation for the purposes of appeal. If the regulation is suspended under § 2.2-4007.06, such readoption shall take place after the thirty-day public comment period required by that subsection. Suspension of the regulatory process by the agency may occur simultaneously with the filing of final regulations as provided in subsection B of § 2.2-4013.

When a regulation has been suspended, the agency must set the effective date no earlier than fifteen days from publication of the readoption action and any changes made to the regulation. During that fifteen-day period, if the agency receives requests from at least twenty-five persons for

the opportunity to comment on new substantial changes, it shall again suspend the regulation pursuant to § 2.2-4007.06.

C. This section shall not apply to the issuance by the State Air Pollution Control Board of variances to its regulations.

1984, c. 5, § 9-6.14:9.3; 1993, cc. 551, 772, 898; 1995, c. 25; 2001, c. 844; 2002, cc. 391, 677; 2004, c. 777; 2007, cc. 873, 916.

§ 2.2-4016. Withdrawal of regulation

Nothing in this chapter shall prevent any agency from withdrawing any regulation at any time prior to the effective date of that regulation. A regulation may be repealed after its effective date only in accordance with the provisions of this chapter that govern the adoption of regulations.

1984, c. 5, § 9-6.14:9.4; 1985, c. 602; 2001, c. 844.

§ 2.2-4017. Periodic review of regulations

Each Governor shall mandate through executive order a procedure for periodic review during that Governor's administration of regulations of agencies within the executive branch of state government. The procedure shall include (i) a review by the Attorney General to ensure statutory authority for regulations and (ii) a determination by the Governor whether the regulations are (a) necessary for the protection of public health, safety and welfare and (b) clearly written and easily understandable.

The Governor may require each agency (i) to review all regulations promulgated by that agency to determine whether new regulations should be adopted and old regulations amended or repealed, and (ii) to prepare a written report summarizing the agency's findings about its regulations, its reasons for its findings and any proposed course of action.

1984, c. 5, § 9-6.14:25; 2001, c. 844.

Article 3 - CASE DECISIONS

§ 2.2-4018. Exemptions from operation of Article 3

The following agency actions otherwise subject to this chapter shall be exempted from the operation of this article.

1. The assessment of taxes or penalties and other rulings in individual cases in connection with the administration of the tax laws.

2. The award or denial of claims for workers' compensation.

3. The grant or denial of public assistance or social services.

4. Temporary injunctive or summary orders authorized by law.

5. The determination of claims for unemployment compensation or special unemployment.

6. The suspension of any license, certificate, registration or authority granted any person by the Department of Health Professions or the Department of Professional and Occupational Regulation for the dishonor, by a bank or financial institution named, of any check, money draft or similar instrument used in payment of a fee required by statute or regulation.

7. The determination of accreditation or academic review status of a public school or public school division or approval by the Board of Education of a school division corrective action plan required by § 22.1-253.13:3.

1985, c. 602, § 9-6.14:4.1; 1986, c. 615; 1987, cc. 375, 652; 1988, cc. 364, 424, 498, 723, 765, 820; 1989, cc. 54, 299, 478; 1990, cc. 721, 968; 1991, cc. 80, 294, 344; 1992, cc. 200, 409, 488, 592, 793; 1993, cc. 537, 669, 898; 1994, cc. 237, 577, 649, 740, 743, 801; 1995, cc. 103, 499, 516; 1996, cc. 51, 152, 158, 189, 205, 279, 320, 345, 573, 590, 598, 638, 705, 735, 818, 1012; 1997, cc. 87, 88, 109, 212, 390, 439, 567, 624, 785, 806, 845, 850, 861, 868; 1998, cc. 39, 619, 784; 1999, cc. 412, 421, 433, 603; 2000, cc. 382, 400, 924, 1011; 2001, c. 844; 2002, c. 747; 2004, c. 965.

§ 2.2-4019. Informal fact finding proceedings

A. Agencies shall ascertain the fact basis for their decisions of cases through informal conference or consultation proceedings unless the named party and the agency consent to waive such a conference or proceeding to go directly to a formal hearing. Such conference-consultation procedures shall include rights of parties to the case to (i) have reasonable notice thereof, which notice shall include contact information consisting of the name, telephone number, and government email address of the person designated by the agency to answer questions or otherwise assist a named party; (ii) appear in person or by counsel or other qualified representative before the agency or its subordinates, or before a hearing officer for the informal presentation of factual data, argument, or proof in connection with any case; (iii) have notice of any contrary fact basis or information in the possession of the agency that can be relied upon in making an adverse decision; (iv) receive a prompt decision of any application for a license, benefit, or renewal thereof; and (v) be informed, briefly and generally in writing, of the factual or procedural basis for an adverse decision in any case.

B. Agencies may, in their case decisions, rely upon public data, documents or information only when the agencies have provided all parties with advance notice of an intent to consider such public data, documents or information. This requirement shall not apply to an agency's reliance on case law and administrative precedent.

1975, c. 503, § 9-6.14:11; 1986, c. 615; 1989, c. 601; 1993, c. 898; 1994, c. 748; 1995, c. 398; 2001, c. 844; 2016, c. 39.

§ 2.2-4020. Formal hearings; litigated issues

A. The agency shall afford opportunity for the formal taking of evidence upon relevant fact issues in any case in which the basic laws provide expressly for decisions upon or after hearing and may

do so in any case to the extent that informal procedures under § 2.2-4019 have not been had or have failed to dispose of a case by consent.

B. Parties to formal proceedings shall be given reasonable notice of the (i) time, place, and nature thereof; (ii) basic law under which the agency contemplates its possible exercise of authority; (iii) matters of fact and law asserted or questioned by the agency; and (iv) contact information consisting of the name, telephone number, and government email address of the person designated by the agency to respond to questions or otherwise assist a named party. Applicants for licenses, rights, benefits, or renewals thereof have the burden of approaching the agency concerned without such prior notice but they shall be similarly informed thereafter in the further course of the proceedings whether pursuant to this section or to § 2.2-4019.

C. In all such formal proceedings the parties shall be entitled to be accompanied by and represented by counsel, to submit oral and documentary evidence and rebuttal proofs, to conduct such cross-examination as may elicit a full and fair disclosure of the facts, and to have the proceedings completed and a decision made with dispatch. The burden of proof shall be upon the proponent or applicant. The presiding officers at the proceedings may (i) administer oaths and affirmations, (ii) receive probative evidence, exclude irrelevant, immaterial, insubstantial, privileged, or repetitive proofs, rebuttal, or cross-examination, rule upon offers of proof, and oversee a verbatim recording of the evidence, (iii) hold conferences for the settlement or simplification of issues by consent, (iv) dispose of procedural requests, and (v) regulate and expedite the course of the hearing. Where a hearing officer presides, or where a subordinate designated for that purpose presides in hearings specified in subsection F of § 2.2-4024, he shall recommend findings and a decision unless the agency shall by its procedural regulations provide for the making of findings and an initial decision by the presiding officers subject to review and reconsideration by the agency on appeal to it as of right or on its own motion. The agency shall give deference to findings by the presiding officer explicitly based on the demeanor of witnesses.

D. Prior to the recommendations or decisions of subordinates, the parties concerned shall be given opportunity, on request, to submit in writing for the record (i) proposed findings and conclusions and (ii) statements of reasons therefor. In all cases, on request, opportunity shall be afforded for oral argument (a) to hearing officers or subordinate presiding officers, as the case may be, in all cases in which they make such recommendations or decisions or (b) to the agency in cases in which it makes the original decision without such prior recommendation and otherwise as it may permit in its discretion or provide by general rule. Where hearing officers or subordinate presiding officers, as the case may be, make recommendations, the agency shall receive and act on exceptions thereto.

E. All decisions or recommended decisions shall be served upon the parties, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence presented by the record and relevant to the basic law under which the agency is oper-

ating together with the appropriate order, license, grant of benefits, sanction, relief, or denial thereof.

1975, c. 503, § 9-6.14:12; 1986, c. 615; 1991, c. 584; 1993, c. 898; 1995, c. 398; 2001, c. 844; 2016, cc. 39, 694.

§ 2.2-4020.1. Summary case decisions

A. Any person who has (i) applied for a permit, certificate, or license from an agency or (ii) received written notice of a potential violation from an agency may request a summary case decision from the agency. The request for a summary case decision shall be in writing, signed by or on behalf of the requestor, and be submitted to the agency secretary as defined by the Rules of the Supreme Court of Virginia. The request shall include:

1. A statement that no material facts are in dispute;

2. A proposed stipulation of all such undisputed material facts concerning the application or notice;

3. A clear and concise statement of the questions of law to be decided by summary case decision; and

4. A statement that the requestor waives his right to any other administrative proceeding provided in this article by the agency on the questions of law to be decided by summary case decision.

B. Within 21 days of receipt of a complete request for summary case decision, the agency shall determine whether the matter in dispute properly may be decided by summary case decision and shall promptly notify the requestor of its determination in writing. If a request for summary case decision is not complete, the agency may request additional specific information from the requestor. The agency shall decide the matter by summary case decision if it determines that there are no disputed issues of material fact. However, if (i) an informal fact-finding proceeding as provided in § 2.2-4019, a formal hearing as provided in § 2.2-4020, or other proceeding authorized by the agency's basic law concerning the application or notice has been scheduled, the requestor has been notified, and the issues that are the subject of such proceeding or hearing include questions that are the subject of the request for summary case decision or (ii) the matter must be decided through any public participation requirements under this chapter or the agency's basic law, the agency shall not be required to decide the matter by summary case decision.

C. Denial of a request for summary case decision shall not be subject to judicial review in accordance with this chapter and the Rules of the Supreme Court of Virginia, and shall not prejudice any rights the requestor has or may have under this chapter or the agency's basic law. Nothing in this article shall prevent an agency from consolidating the summary case decision proceeding into, or proceeding with, a separate informal fact-finding proceeding, formal hearing, or other proceeding authorized by the agency's basic law concerning the matter in question.

D. Upon granting a request for summary case decision, the agency shall establish a schedule for the parties to submit briefs on the questions of law in dispute and may, by agreement of the parties, provide for oral argument.

E. All decisions or recommended decisions shall be served on the requestor, become a part of the record, and briefly state or recommend the findings, conclusions, reasons, or basis therefor upon the evidence contained in the record and relevant to the basic law under which the agency is operating, together with the appropriate order, license, grant of benefits, sanction, relief, or denial thereof.

2006, c. 702.

§ 2.2-4020.2. Default

A. Unless otherwise provided by law, if a party without good cause fails to attend or appear at a formal hearing conducted in accordance with § 2.2-4020, or at an informal fact-finding proceeding conducted pursuant to § 2.2-4019, the presiding officer may issue a default order.

B. A default order shall not be issued by the presiding officer unless the party against whom the default order is entered has been sent the notice that contains a notification that a default order may be issued against that party if that party fails without good cause to attend or appear at the hearing or informal fact-finding proceeding that is the subject of the notice.

C. If a default order is issued, the presiding officer may conduct all further proceedings necessary to complete the adjudication without the defaulting party and shall determine all issues in the adjudication, including those affecting the defaulting party.

D. A recommended, initial, or final order issued against a defaulting party may be based on the defaulting party's admissions or other evidence that may be used without notice to the defaulting party. If the burden of proof is on the defaulting party to establish that the party is entitled to the agency action sought, the presiding officer may issue a recommended, initial, or final order without taking evidence.

E. Not later than 15 days after notice to a party subject to a default order that a recommended, initial, or final order has been rendered against the party, the party may petition the presiding officer to vacate the recommended, initial, or final order. If good cause is shown for the party's failure to appear, the presiding officer shall vacate the decision and, after proper service of notice, conduct another evidentiary hearing. If good cause is not shown for the party's failure to appear, the presiding officer shall deny the motion to vacate.

F. The provisions of this section shall not apply to any administrative hearings process that is governed by § 32.1-325.1 relating to provider appeals.

2015, c. 638.

§ 2.2-4021. Timetable for decision; exemptions

A. In cases where a board or commission meets to render (i) an informal fact-finding decision or (ii) a decision on a litigated issue, and information from a prior proceeding is being considered, persons who participated in the prior proceeding shall be provided an opportunity to respond at the board or commission meeting to any summaries of the prior proceeding prepared by or for the board or commission.

B. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a hearing officer is not used or is not empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 90 days from the date of the informal fact-finding, formal proceeding, or completion of a summary case decision proceeding, or from a later date agreed to by the named party and the agency. If the agency does not render a decision within 90 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision shall be deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act, (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act, or (iii) the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act. An agency shall provide notification to the named party of its decision within five days of the decision.

C. In any informal fact-finding, formal proceeding, or summary case decision proceeding in which a hearing officer is empowered to recommend a finding, the board, commission, or agency personnel responsible for rendering a decision shall render that decision within 30 days from the date that the agency receives the hearing officer's recommendation. If the agency does not render a decision within 30 days, the named party to the case decision may provide written notice to the agency that a decision is due. If no decision is made within 30 days from agency receipt of the notice, the decision is deemed to be in favor of the named party. The preceding sentence shall not apply to case decisions before (i) the State Water Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Water Act, (ii) the State Air Pollution Control Board or the Department of Environmental Quality to the extent necessary to comply with the federal Clean Air Act, or (iii) the Virginia Soil and Water Conservation Board or the Department of Conservation and Recreation to the extent necessary to comply with the federal Clean Water Act. An agency shall provide notice to the named party of its decision within five days of the decision.

D. The provisions of subsection B notwithstanding, if the board members or agency personnel who conducted the informal fact-finding, formal proceeding, or summary case decision proceeding are unable to attend to official duties due to sickness, disability, or termination of their official capacity with the agency, then the timeframe provisions of subsection B shall be reset and commence

from the date that either new board members or agency personnel are assigned to the matter or a new proceeding is conducted if needed, whichever is later. An agency shall provide notice within five days to the named party of any incapacity of the board members or agency personnel that necessitates a replacement or a new proceeding.

1975, c. 503, §§ 9-6.14:11, 9-6.14:12; 1986, c. 615; 1989, c. 601; 1991, c. 584; 1993, c. 898; 1994, c. 748; 1995, c. 398; 2001, c. 844; 2005, c. 102; 2006, c. 702.

§ 2.2-4022. Subpoenas, depositions and requests for admissions

The agency or its designated subordinates may, and on request of any party to a case shall, issue subpoenas requiring testimony or the production of books, papers, and physical or other evidence. Any person so subpoenaed who objects may, if the agency does not quash or modify the subpoena at his timely request as illegally or improvidently granted, immediately procure by petition a decision on the validity thereof in the circuit court as provided in § 2.2-4003; and otherwise in any case of refusal or neglect to comply with an agency subpoena, unless the basic law under which the agency is operating provides some other recourse, enforcement, or penalty, the agency may procure an order of enforcement from such court. Depositions de bene esse and requests for admissions may be directed, issued, and taken on order of the agency for good cause shown; and orders or authorizations therefor may be challenged or enforced in the same manner as subpoenas. Nothing in this section shall be taken to authorize discovery proceedings.

1975, c. 503, § 9-6.14:13; 2001, c. 844.

§ 2.2-4023. Final orders

The terms of any final agency case decision, as signed by it, shall be served upon the named parties by mail unless service otherwise made is duly acknowledged by them in writing. The signed originals shall remain in the custody of the agency as public records subject to judicial notice by all courts and agencies; and they, or facsimiles thereof, together with the full record or file in every case shall be made available for public inspection or copying except (i) so far as the agency may withhold the same in whole or part for the purpose of protecting individuals mentioned from personal embarrassment, obloquy, or disclosures of a private nature including statements respecting the physical, mental, moral, or financial condition of such individuals or (ii) for trade secrets or, so far as protected by other laws, other commercial or industrial information imparted in confidence. Final orders may be recorded, enforced, and satisfied as orders or decrees of a circuit court upon certification of such orders by the agency head or his designee.

1975, c. 503, § 9-6.14:14; 2001, c. 844; 2009, c. 797.

§ 2.2-4023.1. Reconsideration

A. A party may file a petition for reconsideration of an agency's final decision made pursuant to § 2.2-4020. The petition shall be filed with the agency not later than 15 days after service of the final decision and shall state the specific grounds on which relief is requested. The petition shall contain a full and clear statement of the facts pertaining to the reasons for reconsideration, the

grounds in support thereof, and a statement of the relief desired. A timely filed petition for reconsideration shall not suspend the execution of the agency decision nor toll the time for filing a notice of appeal under Rule 2A:2 of the Rules of Supreme Court of Virginia, unless the agency provides for suspension of its decision when it grants a petition for reconsideration. The failure to file a petition for reconsideration shall not constitute a failure to exhaust all administrative remedies.

B. The agency shall render a written decision on a party's timely petition for reconsideration within 30 days from receipt of the petition for reconsideration. Such decision shall (i) deny the petition, (ii) modify the case decision, or (iii) vacate the case decision and set a new hearing for further proceedings. The agency shall state the reasons for its action.

C. If reconsideration is sought for the decision of a policy-making board of an agency, such board may (i) consider the petition for reconsideration at its next regularly scheduled meeting; (ii) schedule a special meeting to consider and decide upon the petition within 30 days of receipt; or (iii) notwithstanding any other provision of law, delegate authority to consider the petition to either the board chairman, a subcommittee of the board, or the director of the agency that provides administrative support to the board, in which case a decision on the reconsideration shall be rendered within 30 days of receipt of the petition by the board.

D. Denial of a petition for reconsideration shall not constitute a separate case decision and shall not on its own merits be subject to judicial review. It may, however, be considered by a reviewing court as part of any judicial review of the case decision itself.

E. The agency may reconsider its final decision on its own initiative for good cause within 30 days of the date of the final decision. An agency may develop procedures for reconsideration of its final decisions on its own initiative.

F. Notwithstanding the provisions of this section, (i) any agency may promulgate regulations that specify the scope of evidence that may be considered by such agency in support of any petition for reconsideration and (ii) any agency that has statutory authority for reconsideration in its basic law may respond to requests in accordance with such law.

2016, c. 694.

Article 4 - HEARING OFFICERS

§ 2.2-4024. Hearing officers

A. In all formal hearings conducted in accordance with § 2.2-4020, the hearing shall be presided over by a hearing officer selected from a list prepared by the Executive Secretary of the Supreme Court and maintained in the Office of the Executive Secretary of the Supreme Court. Parties to informal fact-finding proceedings conducted pursuant to § 2.2-4019 may agree at the outset of the proceeding to have a hearing officer preside at the proceeding, such agreement to be revoked only by mutual consent. The Executive Secretary may promulgate rules necessary for the administration

of the hearing officer system and shall have the authority to establish the number of hearing officers necessary to preside over administrative hearings in the Commonwealth.

Prior to being included on the list, all hearing officers shall meet the following minimum standards:

1. Active membership in good standing in the Virginia State Bar;

2. Active practice of law for at least five years; and

3. Completion of a course of training approved by the Executive Secretary of the Supreme Court. In order to comply with the demonstrated requirements of the agency requesting a hearing officer, the Executive Secretary may require additional training before a hearing officer shall be assigned to a proceeding before that agency.

B. On request from the head of an agency, the Executive Secretary shall name a hearing officer from the list, selected on a rotation system administered by the Executive Secretary. Lists reflecting geographic preference and specialized training or knowledge shall be maintained by the Executive Secretary if an agency demonstrates the need.

C. A hearing officer appointed in accordance with this section shall be subject to disqualification as provided in § 2.2-4024.1. If the hearing officer denies a petition for disqualification pursuant to § 2.2-4024.1, the petitioning party may request reconsideration of the denial by filing a written request with the Executive Secretary along with an affidavit, prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded, or the applicable rule of practice requiring disqualification.

The issue shall be determined not less than 10 days prior to the hearing by the Executive Secretary.

D. Any hearing officer empowered by the agency to provide a recommendation or conclusion in a case decision matter shall render that recommendation or conclusion within 90 days from the date of the case decision proceeding or from a later date agreed to by the named party and the agency. If the hearing officer does not render a decision within 90 days, then the named party to the case decision may provide written notice to the hearing officer and the Executive Secretary of the Supreme Court that a decision is due. If no decision is made within 30 days from receipt by the hearing officer of the notice, then the Executive Secretary of the Supreme Court shall remove the hearing officer from the hearing officer list and report the hearing officer to the Virginia State Bar for possible disciplinary action, unless good cause is shown for the delay.

E. The Executive Secretary shall remove hearing officers from the list, upon a showing of cause after written notice and an opportunity for a hearing. When there is a failure by a hearing officer to render a decision as required by subsection D, the burden shall be on the hearing officer to show good cause for the delay. Decisions to remove a hearing officer may be reviewed by a request

to the Executive Secretary for reconsideration, followed by judicial review in accordance with this chapter.

F. (Effective until July 1, 2018) This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Alcoholic Beverage Control Board, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ 46.2-100 et seq.), § 58.1-2409, or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened pursuant to § 54.1-2400, including any panel having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

F. (Effective July 1, 2018) This section shall not apply to hearings conducted by (i) any commission or board where all of the members, or a quorum, are present; (ii) the Virginia Alcoholic Beverage Control Authority, the Virginia Workers' Compensation Commission, the State Corporation Commission, the Virginia Employment Commission, the Department of Motor Vehicles under Title 46.2 (§ 46.2-100 et seq.), § 58.1-2409, or Chapter 27 (§ 58.1-2700 et seq.) of Title 58.1, or the Motor Vehicle Dealer Board under Chapter 15 (§ 46.2-1500 et seq.) of Title 46.2; or (iii) any panel of a health regulatory board convened pursuant to § 54.1-2400, including any panel having members of a relevant advisory board to the Board of Medicine. All employees hired after July 1, 1986, pursuant to §§ 65.2-201 and 65.2-203 by the Virginia Workers' Compensation Commission to conduct hearings pursuant to its basic laws shall meet the minimum qualifications set forth in subsection A. Agency employees who are not licensed to practice law in the Commonwealth, and are presiding as hearing officers in proceedings pursuant to clause (ii) shall participate in periodic training courses.

G. Notwithstanding the exemptions of subsection A of § 2.2-4002, this article shall apply to hearing officers conducting hearings of the kind described in § 2.2-4020 for the Department of Game and Inland Fisheries, the Virginia Housing Development Authority, the Milk Commission, and the Virginia Resources Authority pursuant to their basic laws.

1986, c. 615, § 9-6.14:14.1; 1988, c. 865; 1990, c. 219; 1991, c. 214; 1992, c. 659; 1993, c. 898; 1995, cc. 744, 776, 803, 805; 1996, cc. 189, 205, 639, 658; 2001, c. 844; 2002, cc. 448, 698; 2009, c. 806; 2012, cc. 803, 835; 2015, cc. 38, 636, 730.

§ 2.2-4024.1. Disqualification

A. An individual who has served as investigator, prosecutor, or advocate at any stage in a contested case or who is subject to the authority, direction, or discretion of an individual who has served as investigator, prosecutor, or advocate at any stage in a contested case may not serve as the presiding officer or hearing officer in the same case. An agency head who has participated in a determination of probable cause or other preliminary determination in an adjudication may serve as the presiding officer in the adjudication unless a party demonstrates grounds for disqualification under subsection B.

B. A presiding officer or hearing officer is subject to disqualification for any factor that would cause a reasonable person to question the impartiality of the presiding officer or hearing officer, which may include bias, prejudice, financial interest, or ex parte communications; however, the fact that a hearing officer is employed by an agency as a hearing officer, without more, is not grounds for disqualification. The presiding officer or hearing officer, after making a reasonable inquiry, shall disclose to the parties all known facts related to grounds for disqualification that are material to the impartiality of the presiding officer or hearing officer in the proceeding. The presiding officer or hearing officer may self-disqualify and withdraw from any case for reasons listed in this subsection.

C. A party may petition for the disqualification of the presiding officer or hearing officer promptly after notice that the person will preside or, if later, promptly on discovering facts establishing a ground for disqualification. The petition must state with particularity the ground on which it is claimed that a fair and impartial hearing cannot be accorded or the applicable rules of ethics that require disqualification. The petition may be denied if the party fails to promptly request disqualification after discovering a ground for disqualification.

D. A presiding officer not appointed pursuant to the provisions of § 2.2-4024, whose disqualification is requested shall decide whether to grant the petition and state in a record the facts and reasons for the decision. The decision to deny disqualification by a hearing officer appointed pursuant to § 2.2-4024 shall be reviewable according to the procedure set forth in subsection C of § 2.2-4024. In all other circumstances, the presiding officer's or hearing officer's decision to deny disqualification is subject to judicial review in accordance with this chapter, but is not otherwise subject to interlocutory review.

2015, c. 636.

§ 2.2-4024.2. Ex parte communications

A. Except as otherwise provided in this section, while a formal hearing conducted in accordance with § 2.2-4020 is pending, the hearing officer shall not communicate with any person concerning the hearing without notice and opportunity for all parties to participate in the communication.

B. A hearing officer may communicate about a pending formal hearing conducted in accordance with § 2.2-4020 with any person if the communication is authorized by law or concerns an uncontested procedural issue. A hearing officer may communicate with any person on ministerial

matters about a pending formal hearing conducted in accordance with § 2.2-4020 if the communication does not augment, diminish, or modify the evidence in the record.

C. If a hearing officer makes or receives a communication prohibited by this section, the hearing officer shall make a part of the hearing record: (i) a copy of the communication or, if it is not written, a memorandum containing the substance of the communication; (ii) the response thereto; and (iii) the identity of the person who made the communication.

D. If a communication prohibited by this section is made, the hearing officer shall notify all parties of the prohibited communication and permit the parties to respond not later than 15 days after the notice is given. For good cause, the hearing officer may permit additional evidence in response to the prohibited communication.

E. If necessary to eliminate any prejudicial effect of a communication made that is prohibited by this section, a hearing officer may (i) be disqualified under § 2.2-4024.1; (ii) seal the parts of the record pertaining to the communication by protective order; or (iii) grant other appropriate relief, including an adverse ruling on the merits of the case.

2016, c. 478.

Article 5 - COURT REVIEW

§ 2.2-4025. Exemptions operation of this article; limitations

A. This article shall not apply to any agency action that (i) is placed beyond the control of the courts by constitutional or statutory provisions expressly precluding court review, (ii) involves solely the internal management or routine of an agency, (iii) is a decision resting entirely upon an inspection, test, or election save as to want of authority therefor or claim of arbitrariness or fraud therein, (iv) is a case in which the agency is acting as an agent for a court, or (v) encompasses matters subject by law to a trial de novo in any court.

B. The provisions of this article, however, shall apply to case decisions regarding the grant or denial of Temporary Assistance for Needy Families, Medicaid, food stamps, general relief, auxiliary grants, or state-local hospitalization. However, no appeal may be brought regarding the adequacy of standards of need and payment levels for public assistance and social services programs. Notwithstanding the provisions of § 2.2-4027, the review shall be based solely upon the agency record, and the court shall be limited to ascertaining whether there was evidence in the agency record to support the case decision of the agency acting as the trier of fact. If the court finds in favor of the party complaining of agency action, the court shall remand the case to the agency for further proceedings. The validity of any statute, regulation, standard or policy, federal or state, upon which the action of the agency was based shall not be subject to review by the court. No intermediate relief shall be granted under § 2.2-4028.

1975, c. 503, §§ 9-6.14:4.1, 9-6.14:15, 9-6.14:16; 1986, c. 615; 1989, cc. 677, 734; 2001, c. 844; 2002, c. 747.

§ 2.2-4026. Right, forms, venue; date of adoption or readoption for purposes of appeal

A. Any person affected by and claiming the unlawfulness of any regulation or party aggrieved by and claiming unlawfulness of a case decision and whether exempted from the procedural requirements of Article 2 (§ 2.2-4006 et seq.) or 3 (§ 2.2-4018 et seq.) shall have a right to the direct review thereof by an appropriate and timely court action against the agency or its officers or agents in the manner provided by the Rules of Supreme Court of Virginia. Actions may be instituted in any court of competent jurisdiction as provided in § 2.2-4003, and the judgments of the courts of original jurisdiction shall be subject to appeal to or review by higher courts as in other cases unless otherwise provided by law. In addition, when any regulation or case decision is the subject of an enforcement action in court, it shall also be reviewable by the court as a defense to the action, and the judgment or decree therein shall be appealable as in other cases.

B. In any court action under this section by a person affected by and claiming the unlawfulness of any regulation on the basis that an agency failed to follow any procedure for the promulgation or adoption of a regulation specified in this chapter or in such agency's basic law, the burden shall be upon the party complaining of the agency action to designate and demonstrate the unlawfulness of the regulation by a preponderance of the evidence. If the court finds in favor of the party complaining of the agency action, the court shall declare the regulation null and void and remand the case to the agency for further proceedings.

C. Notwithstanding any other provision of law or of any executive order issued under this chapter, with respect to any challenge of a regulation subject to judicial review under this chapter, the date of adoption or readoption of the regulation pursuant to § 2.2-4015 for purposes of appeal under the Rules of Supreme Court shall be the date of publication in the Register of Regulations.

1975, c. 503, § 9-6.14:16; 1986, c. 615; 1989, cc. 677, 734; 2001, c. 844; 2014, c. 699; 2016, c. 359.

§ 2.2-4027. Issues on review

The burden shall be upon the party complaining of agency action to designate and demonstrate an error of law subject to review by the court. Such issues of law include: (i) accordance with constitutional right, power, privilege, or immunity, (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter, the stated objectives for which regulations may be made, and the factual showing respecting violations or entitlement in connection with case decisions, (iii) observance of required procedure where any failure therein is not mere harmless error, and (iv) the substantiality of the evidentiary support for findings of fact. The determination of such fact issue shall be made upon the whole evidentiary record provided by the agency if its proceeding was required to be conducted as provided in § 2.2-4009 or 2.2-4020 or, as to subjects exempted from those sections, pursuant to constitutional requirement or statutory provisions for opportunity for an agency record of and decision upon the evidence therein.

In addition to any other judicial review provided by law, a small business, as defined in subsection A of § 2.2-4007.1, that is adversely affected or aggrieved by final agency action shall be entitled to judicial review of compliance with the requirements of subdivision A 2 of § 2.2-4007.04 and § 2.2-4007.1 within one year following the date of final agency action.

When the decision on review is to be made on the agency record, the duty of the court with respect to issues of fact shall be to determine whether there was substantial evidence in the agency record to support the agency decision. The duty of the court with respect to the issues of law shall be to review the agency decision de novo. The court shall enter judgment in accordance with § 2.2-4029.

Where there is no agency record so required and made, any necessary facts in controversy shall be determined by the court upon the basis of the agency file, minutes, and records of its proceedings under § 2.2-4007.01 or 2.2-4019 as augmented, if need be, by the agency pursuant to order of the court or supplemented by any allowable and necessary proofs adduced in court except that the function of the court shall be to determine only whether the result reached by the agency could reasonably be said, on all such proofs, to be within the scope of the legal authority of the agency.

Whether the fact issues are reviewed on the agency record or one made in the review action, the court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.

1975, c. 503, § 9-6.14:17; 1989, c. 601; 2001, c. 844; 2005, cc. 619, 682; 2007, cc. 873, 916; 2013, c. 619.

§ 2.2-4028. Intermediate relief

When judicial review is instituted or is about to be, the agency concerned may, on request of any party or its own motion, postpone the effective date of the regulation or decision involved where it deems that justice so requires. Otherwise the court may, on proper application and with or without bond, deposits in court, or other safeguards or assurances as may be suitable, issue all necessary and appropriate process to postpone the effective dates or preserve existing status or rights pending conclusion of the review proceedings if the court finds the same to be required to prevent immediate, unavoidable, and irreparable injury and that the issues of law or fact presented are not only substantial but that there is probable cause for it to anticipate a likelihood of reversible error in accordance with § 2.2-4027. Actions by the court may include (i) the stay of operation of agency decisions of an injunctive nature or those requiring the payment of money or suspending or revoking a license or other benefit and (ii) continuation of previous licenses in effect until timely applications for renewal are duly determined by the agency.

1975, c. 503, § 9-6.14:18; 2001, c. 844.

§ 2.2-4029. Court judgments

Unless an error of law as defined in § 2.2-4027 appears, the court shall dismiss the review action or affirm the agency regulation or decision. Otherwise, it may compel agency action unlawfully and arbitrarily withheld or unreasonably delayed except that the court shall not itself undertake to supply agency action committed by the basic law to the agency. Where a regulation or case decision is found by the court not to be in accordance with law under § 2.2-4027, the court shall suspend or set it aside and remand the matter to the agency for further proceedings, if any, as the court may permit or direct in accordance with law.

1975, c. 503, § 9-6.14:19; 2001, c. 844.

§ 2.2-4030. Recovery of costs and attorney fees from agency

A. In any civil case brought under Article 5 (§ 2.2-4025 et seq.) or § 2.2-4002, 2.2-4006, 2.2-4011, or 2.2-4018, in which any person contests any agency action, such person shall be entitled to recover from that agency, including the Department of Game and Inland Fisheries, reasonable costs and attorney fees if such person substantially prevails on the merits of the case and (i) the agency's position is not substantially justified, (ii) the agency action was in violation of law, or (iii) the agency action was for an improper purpose, unless special circumstances would make an award unjust. The award of attorney fees shall not exceed $25,000.

B. Nothing in this section shall be deemed to grant permission to bring an action against an agency if the agency would otherwise be immune from suit or to grant a right to bring an action by a person who would otherwise lack standing to bring the action.

C. Any costs and attorney fees assessed against an agency under this section shall be charged against the operating expenses of the agency for the fiscal year in which the assessment is made and shall not be reimbursed from any other source.

1981, c. 446, § 9-6.14:21; 1997, c. 692; 2001, c. 844; 2016, c. 625.

Article 6 - VIRGINIA REGISTER OF REGULATIONS

§ 2.2-4031. Publication of Virginia Register of Regulations; exceptions; notice of public hearings of proposed regulations

A. The Registrar shall publish every two weeks a Virginia Register of Regulations that shall include (i) proposed and final regulations; (ii) emergency regulations; (iii) executive orders; (iv) notices of all public hearings on regulations; and (v) petitions for rulemaking made in accordance with § 2.2-4007. The entire proposed regulation shall be published in the Register; however, if an existing regulation has been previously published in the Virginia Administrative Code, then only those sections of regulations to be amended need to be published in the Register. If the length of the regulation falls within the guidelines established by the Registrar for the publication of a summary in lieu of the full text of the regulation, then, after consultation with the promulgating agency, the Registrar may publish only the summary of the regulation. In this event, the full text of the regulation shall be available for public inspection at the office of the Registrar and the promulgating agency.

If a proposed regulation is adopted as published or, in the sole discretion of the Registrar of Regulations, the only changes that have been made are those that can be clearly and concisely explained, the adopted regulation need not be published at length. Instead, the Register shall contain a notation that the proposed regulation has been adopted as published as a proposed regulation without change or stating the changes made. The proposed regulation shall be clearly identified with a citation to the issue and page numbers where published.

A copy of all reporting forms the promulgating agency anticipates will be incorporated into or be used in administering the regulation shall be published with the proposed and final regulation in the Register.

B. Each regulation shall be prefaced with a summary explaining that regulation in plain and clear language. Summaries shall be prepared by the promulgating agency and approved by the Registrar prior to their publication in the Register. The notice required by § 2.2-4007.03 shall include (i) a statement of the date, time and place of the hearing at which the regulation is to be considered; (ii) a brief statement as to the regulation under consideration; (iii) reference to the legal authority of the agency to act; and (iv) the name, address and telephone number of an individual to contact for further information about that regulation. Agencies shall present their proposed regulations in a standardized format developed by the Virginia Code Commission in accordance with subdivision 2 of § 2.2-4104 of the Virginia Register Act (§ 2.2-4100 et seq.). Notwithstanding the exemptions allowed under § 2.2-4002, 2.2-4006 or 2.2-4011, the proposed and final regulations of all agencies shall be published in the Register. However, proposed regulations of the Marine Resources Commission and regulations exempted by subject from the provisions of this chapter by subsection B of § 2.2-4002 shall be exempt from this section.

C. The Virginia Register of Regulations shall be published by posting the Register on the Virginia Code Commission's website. The Virginia Code Commission may arrange for the printing of the Virginia Register as provided in § 30-146.

1984, c. 5, § 9-6.14:22; 1985, cc. 67, 602; 1986, c. 615; 1988, c. 364; 1989, c. 71; 1992, c. 216; 2001, c. 844; 2002, c. 241; 2003, c. 212; 2007, cc. 300, 873, 916; 2011, c. 800.

§§ 2.2-4032, 2.2-4033. Repealed

Repealed by Acts 2003, c. 212, cl. 2, effective March 16, 2003.

Chapter 41 - VIRGINIA REGISTER ACT

§ 2.2-4100. Short title; purpose of chapter; declaration of policy

A. This chapter shall be known and may be cited as the "Virginia Register Act."

B. It is the purpose of this chapter to satisfy the need for public availability of information respecting the regulations of state agencies. Nothing in this chapter contemplates or is designed to limit or impede the present or future making, amendment, or repeal of regulations by administrative agencies. It is declared to be the policy of the Commonwealth to encourage, facilitate, and assist

agencies in developing regulations that will inform the public of the requirements, policies, and procedures of the administrative authorities of the State.

1973, c. 535, §§ 9-6.15, 9-6.22; 1975, c. 502; 2001, c. 844.

§ 2.2-4101. Definitions

As used in this chapter, unless the context requires a different meaning:

"Agency" means any authority, instrumentality, officer, board, or other unit of the government of the Commonwealth with express or implied authority to issue regulations other than the General Assembly, courts, municipal corporations, counties, other local or regional governmental authorities including sanitary or other districts and joint state-federal, interstate or intermunicipal authorities, the Virginia Resources Authority, the Virginia Code Commission with respect to minor changes made under the provisions of § 30-150, and educational institutions operated by the Commonwealth with respect to regulations that pertain to (i) their academic affairs; (ii) the selection, tenure, promotion and disciplining of faculty and employees; (iii) the selection of students; and (iv) rules of conduct and disciplining of students.

"Virginia Administrative Code" means the codified publication of regulations under the provisions of Chapter 15 (§ 30-145 et seq.) of Title 30.

"Commission" means the Virginia Code Commission.

"Guidance document" means any document developed by a state agency or staff that provides information or guidance of general applicability to the staff or public to interpret or implement statutes or the agency's rules or regulations, excluding agency minutes or documents that pertain only to the internal management of agencies. Nothing in this definition shall be construed or interpreted to expand the identification or release of any document otherwise protected by law.

"Registrar" means the Registrar of Regulations appointed as provided in § 2.2-4102.

"Rule" or "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an agency in accordance with the authority conferred on it by applicable basic laws.

"Virginia Register of Regulations" means the publication issued under the provisions of Article 6 (§ 2.2-4031 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.).

1973, c. 535, § 9-6.16; 1975, c. 502; 1982, c. 489; 1984, c. 5; 1985, cc. 67, 602; 1993, c. 669; 1997, cc. 11, 87; 2001, c. 844.

§ 2.2-4102. Registrar of Regulations; personnel, facilities and services; publications

The Commission shall engage or appoint on a contract, part-time, or annual basis a professionally experienced or trained Registrar of Regulations. Under the direction of the Commission, the Registrar shall, at a suitable place to be designated by the Commission, perform the duties required by this chapter or assigned by the Commission in accordance with this chapter or Chapter 15 (§ 30-145 et seq.) of Title 30. The Commission shall as necessary also (i) appoint clerical or other

personnel if any, (ii) arrange by contract or otherwise for the necessary facilities and services, and (iii) provide for the compilation and publication of the Virginia Register of Regulations and the Virginia Administrative Code pursuant to §§ 2.2-4031 and 30-146.

1973, c. 535, § 9-6.17; 1975, c. 502; 1982, c. 489; 1984, c. 5; 1992, c. 216; 1993, c. 669; 1997, c. 87; 2001, c. 844; 2003, c. 212.

§ 2.2-4103. Agencies to file regulations with Registrar; other duties; failure to file

It shall be the duty of every agency to have on file with the Registrar the full text of all of its currently operative regulations, together with the dates of adoption, revision, publication, or amendment thereof and such additional information requested by the Commission or the Registrar for the purpose of publishing the Virginia Register of Regulations and the Virginia Administrative Code. Thereafter, coincidentally with the issuance thereof, each agency shall from day to day so file, date, and supplement all new regulations and amendments, repeals, or additions to its previously filed regulations. The filed regulations shall (i) indicate the laws they implement or carry out, (ii) designate any prior regulations repealed, modified, or supplemented, (iii) state any special effective or terminal dates, and (iv) be accompanied by a statement or certification, either in original or electronic form, that the regulations are full, true, and correctly dated. No regulation or amendment or repeal thereof shall be effective until filed with the Registrar.

Orders condemning or closing any shellfish, finfish or crustacea growing area and the shellfish, finfish or crustacea located thereon pursuant to Article 2 (§ 28.2-803 et seq.) of Chapter 8, of Title 28.2, which are exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq.) as provided in subsection B of § 2.2-4002, shall be effective on the date specified by the promulgating agency. Such orders shall continue to be filed with the Registrar either before or after their effective dates in order to satisfy the need for public availability of information respecting the regulations of state agencies.

An order setting a date of closure for the Chesapeake Bay purse seine fishery for Atlantic menhaden for reduction purposes pursuant to § 28.2-1000.2, which is exempt from the requirements of the Administrative Process Act as provided by subsection A of § 2.2-4002, shall be effective on the date specified. Such orders shall be filed with the Registrar for prompt publication.

In addition, each agency shall itself (i) maintain a complete list of all of its currently operative regulations for public consultation, (ii) make available to public inspection a complete file of the full texts of all such regulations, and (iii) allow public copying thereof or make copies available either without charge, at cost, or on payment of a reasonable fee. Each agency shall also maintain as a public record a complete file of its regulations that have been superseded on and after June 1, 1975.

It shall be the duty of every agency to annually file with the Registrar for publication in the Virginia Register of Regulations a list of any guidance documents upon which the agency currently relies. The filing shall be made on or before January 1 of each year in a format to be developed by

the Registrar. Each agency shall also (i) maintain a complete list of all of its currently operative guidance documents and make such list available for public inspection, (ii) make available for public inspection the full texts of all such guidance documents to the extent such inspection is permitted by law, and (iii) upon request, make copies of such lists or guidance documents available without charge, at cost, or on payment of a reasonable fee.

Where regulations adopt textual matter by reference to publications other than the Federal Register or Code of Federal Regulations, the agency shall (i) file with the Registrar copies of the referenced publications, (ii) state on the face of or as notations to regulations making such adoptions by reference the places where copies of the referred publications may be procured, and (iii) make copies of such referred publications available for public inspection and copying along with its other regulations.

Unless he finds that there are special circumstances requiring otherwise, the Governor, in addition to the exercise of his authority to see that the laws are faithfully executed, may, until compliance with this chapter is achieved, withhold the payment of compensation or expenses of any officer or employee of any agency in whole or part whenever the Commission certifies to him that the agency has failed to comply with this section or this chapter in stated respects, to respond promptly to the requests of the Registrar, or to comply with the regulations of the Commission.

1973, c. 535, § 9-6.18; 1975, c. 502; 1982, c. 489; 1989, c. 299; 1997, cc. 11, 87; 2001, c. 844; 2007, c. 41; 2010, cc. 178, 407, 728.

§ 2.2-4104. Duties of Commission in compiling Virginia Administrative Code and Register

The Commission, through the Registrar and otherwise as it directs, may in the course of the work of compiling and maintaining the Virginia Administrative Code and the Register:

1. In writing at any time call upon all agencies to submit to the Registrar one or more copies of all existing regulations as well as all subsequent amendments, repeals, additions, or new regulations. However, this subdivision shall not affect the duty of agencies to comply with § 2.2-4103 without calls or reminders;

2. Advise agencies as to the form and style of their regulations as well as the codification thereof; and

3. Formulate and issue, without reference to or limitation by the requirements of the Administrative Process Act (§ 2.2-4000 et seq.), general or special regulations respecting the nature and content of the Virginia Administrative Code, making exceptions thereto, supplementing or limiting the duties of agencies hereunder, and otherwise carrying out the purposes of this chapter.

1973, c. 535, § 9-6.20; 1975, c. 502; 1982, c. 489; 1984, c. 5; 1993, c. 669; 2001, c. 844.

Chapter 41.1 - VIRGINIA ADMINISTRATIVE DISPUTE RESOLUTION ACT

§ 2.2-4115. Definitions

As used in this chapter, unless the context requires otherwise:

"Dispute resolution proceeding" means any structured process in which a neutral assists parties to a dispute in reaching a voluntary settlement by means of dispute resolution processes such as mediation, conciliation, facilitation, partnering, fact-finding, neutral evaluation, use of ombudsmen or any other proceeding leading to a voluntary settlement. For the purposes of this chapter, the term "dispute resolution proceeding" does not include arbitration.

"Mediation" means a process in which a neutral facilitates communication between the parties and without deciding the issues or imposing a solution on the parties enables them to understand and resolve their dispute.

"Mediation program" means a program of a public body through which mediators or mediation is made available and includes the director, agents and employees of the program.

"Mediator" means a neutral who is an impartial third party selected by agreement of the parties to a dispute to assist them in mediation.

"Neutral" means an individual who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services.

"Public body" means any legislative body; any authority, board, bureau, commission, district or agency of the Commonwealth or any political subdivision of the Commonwealth, including counties, cities and towns, city councils, boards of supervisors, school boards, planning commissions, boards of visitors of institutions of higher education; and other organizations, corporations or agencies in the Commonwealth supported wholly or principally by public funds. "Public body" includes any committee, subcommittee, or other entity however designated, of the public body or formed to advise the public body, including those with private sector or citizen members and corporations organized by the Virginia Retirement System. For the purposes of this chapter the term "public body" does not include courts of the Commonwealth.

"State agency" or "agency" means any authority, instrumentality, officer, board or other unit of state government empowered by the basic laws to adopt regulations or decide cases. For the purposes of this chapter, the term "state agency" does not include the courts of the Commonwealth.

2002, c. 633.

§ 2.2-4116. Authority to use dispute resolution proceedings

A. Except as specifically prohibited by law, if the parties to the dispute agree, any public body may use dispute resolution proceedings to narrow or resolve any issue in controversy. Nothing in this chapter shall be construed to prohibit or limit other public body dispute resolution authority. Nothing in this chapter shall create or alter any right, action, cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act (§ 2.2-4000 et seq.), applicable federal or state law or any provision that requires the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program. Nothing in this chapter shall prevent the use of the Virginia Freedom of Information Act to obtain the disclosure of information concerning

expenses incurred in connection with a dispute resolution proceeding or the amount of money paid by a public body or agency to settle a dispute.

B. A decision by a public body to participate in or not to participate in a specific dispute resolution proceeding shall be within the discretion of the public body and is not subject to judicial review. This subsection does not affect or supersede any law mandating the use of a dispute resolution proceeding.

C. An agreement arising out of any dispute resolution proceeding shall not be binding upon a public body unless the agreement is affirmed by the public body.

2002, c. 633.

§ 2.2-4117. State agency promotion of dispute resolution proceedings

A. Each state agency shall adopt a written policy that addresses the use of dispute resolution proceedings within the agency and for the agency's program and operations. The policy shall include, among other things, training for employees involved in implementing the agency's policy and the qualifications of a neutral to be used by the agency.

B. The head of each state agency shall designate an existing or new employee to be the dispute resolution coordinator of the agency. The duties of a dispute resolution coordinator may be collateral to those of an existing official.

C. Each state agency shall review its policies, procedures and regulations and shall determine whether and how to amend such policies, procedures and regulations to authorize and encourage the use of dispute resolution proceedings.

D. Any state agency may use the services of other agencies' employees as neutrals and an agency may allow its employees to serve as neutrals for other agencies as part of a neutral-sharing program.

E. This chapter does not supersede the provisions of subdivision 2 of § 2.2-1202.1 and subdivision B 4 of § 2.2-3000, which require certain agencies to participate in the mediation program administered by the Department of Human Resource Management.

2002, c. 633; 2012, cc. 803, 835.

§ 2.2-4118. Repealed

Repealed by Acts 2012, cc. 803, 835, cl. 3.

§ 2.2-4119. Confidentiality between parties; exemption to Freedom of Information Act

A. Except for the materials described in subsection B, all dispute resolution proceedings conducted pursuant to this chapter are subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. All memoranda, work products, or other materials contained in the case file of a mediator are confidential and all materials in the case file of a mediation program pertaining to a specific

mediation are confidential. Any communication made in or in connection with a mediation that relates to the dispute, including communications to schedule a mediation, whether made to a mediator, a mediation program, a party or any other person is confidential. A written settlement agreement is not confidential unless the parties agree in writing. Confidential materials and communications are not subject to disclosure or discovery in any judicial or administrative proceeding except (i) when all parties to the mediation agree, in writing, to waive the confidentiality; (ii) to the extent necessary in a subsequent action between the mediator and a party for damages arising out of the mediation; (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the mediation; (iv) where communications are sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against the mediator; (v) where a threat to inflict bodily injury is made; (vi) where communications are intentionally used to plan, attempt to commit or commit a crime or conceal an ongoing crime; (vii) where communications are sought or offered to prove or disprove a claim or complaint of misconduct or malpractice filed against a party, nonparty, participant or representative of a party based on conduct occurring during a mediation; (viii) where communications are sought or offered to prove or disprove any of the reasons listed in § 8.01-576.12 that would enable a court to vacate a mediated agreement; or (ix) as provided by law or rule other than the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). The use of attorney work product in a mediation shall not result in a waiver of the attorney work product privilege. Unless otherwise specified by the parties, no mediation proceeding shall be electronically or stenographically recorded.

2002, c. 633.

Chapter 42 - FAIR EMPLOYMENT CONTRACTING ACT

§ 2.2-4200. Declaration of policy; discrimination prohibited in awarding contracts; definitions

A. It is declared to be the policy of the Commonwealth to eliminate all discrimination on account of race, color, religion, sex, or national origin from the employment practices of the Commonwealth, its agencies, and government contractors.

B. In the awarding of contracts, contracting agencies shall not engage in an unlawful discriminatory practice as defined in § 2.2-3901.

C. As used in this chapter, unless the context requires a different meaning:

"Agency" means any agency or instrumentality, corporate or otherwise, of the government of the Commonwealth.

"Contractor" means any individual, partnership, corporation or association that performs services for or supplies goods, materials, or equipment to the Commonwealth or any agency thereof.

1975, c. 626, §§ 2.1-374, 2.1-375, 2.1-376.1; 2001, cc. 45, 844.

§ 2.2-4201. Required contract provisions

All contracting agencies shall include in every government contract of over $10,000 the following provisions:

During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, or national origin, except where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause, including the names of all contracting agencies with which the contractor has contracts of over $10,000.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such contractor is an equal opportunity employer. However, notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this chapter.

The contractor shall include the provisions of the subdivisions 1 and 2 in every subcontract or purchase order of over $10,000, so that such provisions shall be binding upon each subcontractor or vendor.

Nothing contained in this chapter shall be deemed to empower any agency to require any contractor to grant preferential treatment to, or discriminate against, any individual or any group because of race, color, religion, sex or national origin on account of an imbalance that may exist with respect to the total number or percentage of persons of any race, color, religion, sex or national origin employed by such contractor in comparison with the total number or percentage of persons of such race, color, religion, sex or national origin in any community or in the Commonwealth.

1975, c. 626, § 2.1-376; 2001, c. 844.

Chapter 43 - VIRGINIA PUBLIC PROCUREMENT ACT

Article 1 - GENERAL PROVISIONS

§ 2.2-4300. Short title; purpose; declaration of intent

A. This chapter may be cited as the Virginia Public Procurement Act.

B. The purpose of this chapter is to enunciate the public policies pertaining to governmental procurement from nongovernmental sources, to include governmental procurement that may or may not result in monetary consideration for either party. This chapter shall apply whether the consideration is monetary or nonmonetary and regardless of whether the public body, the contractor, or some third party is providing the consideration.

C. To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that procurement procedures involve openness and administrative efficiency, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that the purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered. Public bodies may consider best value concepts when procuring goods and non-professional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

1982, c. 647, § 11-35; 1983, c. 593; 1984, c. 764; 1986, cc. 149, 212, 559; 1994, cc. 661, 918; 1995, c. 18; 1996, cc. 683, 1019; 1997, cc. 85, 488, 785, 861, 863; 1998, cc. 121, 132; 1999, cc. 230, 248, 735; 2000, cc. 29, 382, 400, 642, 644, 666, 703; 2001, cc. 392, 409, 736, 753, 774, 844.

§ 2.2-4301. Definitions

As used in this chapter:

"Affiliate" means an individual or business that controls, is controlled by, or is under common control with another individual or business. A person controls an entity if the person owns, directly or indirectly, more than 10 percent of the voting securities of the entity. For the purposes of this definition "voting security" means a security that (i) confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business or (ii) is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. A general partnership interest shall be deemed to be a voting security.

"Best value," as predetermined in the solicitation, means the overall combination of quality, price, and various elements of required services that in total are optimal relative to a public body's needs.

"Business" means any type of corporation, partnership, limited liability company, association, or sole proprietorship operated for profit.

"Competitive negotiation" is the method of contractor selection set forth in § 2.2-4302.2.

"Competitive sealed bidding" is the method of contractor selection set forth in § 2.2-4302.1.

"Construction" means building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

"Construction management contract" means a contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.

"Design-build contract" means a contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

"Employment services organization" means an organization that provides employment services to individuals with disabilities that is an approved Commission on the Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Goods" means all material, equipment, supplies, printing, and automated data processing hardware and software.

"Informality" means a minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

"Job order contracting" means a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the public body procuring the construction services. A minimum amount of work may be specified in the contract. The contract term and the project amount shall not exceed the limitations specified in § 2.2-4303 or 2.2-4303.2.

"Multiphase professional services contract" means a contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.

"Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services.

"Potential bidder or offeror," for the purposes of §§ 2.2-4360 and 2.2-4364, means a person who, at the time a public body negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or the sale of services, insurance or construction, of the type to be procured under the contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

"Professional services" means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture,

law, dentistry, medicine, optometry, pharmacy or professional engineering. "Professional services" shall also include the services of an economist procured by the State Corporation Commission.

"Public body" means any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this chapter. "Public body" shall include (i) any independent agency of the Commonwealth, and (ii) any metropolitan planning organization or planning district commission which operates exclusively within the Commonwealth of Virginia.

"Public contract" means an agreement between a public body and a nongovernmental source that is enforceable in a court of law.

"Responsible bidder" or "offeror" means a person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance, and who has been prequalified, if required.

"Responsive bidder" means a person who has submitted a bid that conforms in all material respects to the Invitation to Bid.

"Reverse auctioning" means a procurement method wherein bidders are invited to bid on specified goods or nonprofessional services through real-time electronic bidding, with the award being made to the lowest responsive and responsible bidder. During the bidding process, bidders' prices are revealed and bidders shall have the opportunity to modify their bid prices for the duration of the time period established for bid opening.

"Services" means any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

1982, c. 647, § 11-37; 1984, cc. 279, 764; 1985, c. 164; 1987, cc. 176, 218, 474; 1989, cc. 309, 323; 1991, c. 559; 1996, cc. 460, 683; 2000, cc. 621, 638, 643, 644, 647, 665, 692, 703; 2001, cc. 395, 675, 844; 2003, cc. 185, 644, 895, 994, 1006; 2004, c. 458; 2006, c. 206; 2008, c. 371; 2009, cc. 495, 562, 564; 2010, c. 440; 2011, cc. 24, 332, 555; 2012, c. 632; 2013, cc. 482, 518, 540, 543, 583; 2015, cc. 760, 776.

§ 2.2-4302. Implementation

This chapter may be implemented by ordinances, resolutions or regulations consistent with this chapter and with the provisions of other applicable law promulgated by any public body empowered by law to undertake the activities described in this chapter. Any such public body may act by and through its duly designated or authorized officers or employees.

1982, c. 647, § 11-36; 2001, c. 844.

§ 2.2-4302.1. Process for competitive sealed bidding

The process for competitive sealed bidding shall include the following:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the public body has provided for prequalification of bidders, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. No Invitation to Bid for construction services shall condition a successful bidder's eligibility on having a specified experience modification factor. When it is impractical to prepare initially a purchase description to support an award based on prices, an Invitation to Bid may be issued requesting the submission of unpriced offers to be followed by an Invitation to Bid limited to those bidders whose offers have been qualified under the criteria set forth in the first solicitation;

2. Public notice of the Invitation to Bid at least 10 days prior to the date set for receipt of bids by posting on the Department of General Services' central electronic procurement website or other appropriate websites. In addition, public bodies may publish in a newspaper of general circulation. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, bids may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity;

3. Public opening and announcement of all bids received;

4. Evaluation of bids based upon the requirements set forth in the Invitation to Bid, which may include special qualifications of potential contractors, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability; and

5. Award to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the Invitation to Bid, awards may be made to more than one bidder.

For the purposes of subdivision 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

2013, cc. 482, 583; 2016, c. 754.

§ 2.2-4302.2. Process for competitive negotiation

A. The process for competitive negotiation shall include the following:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors that will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or

incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities, specifications or qualifications that will be required. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals. No Request for Proposal for construction authorized by this chapter shall condition a successful offeror's eligibility on having a specified experience modification factor;

2. Public notice of the Request for Proposal at least 10 days prior to the date set for receipt of proposals by posting on the Department of General Services' central electronic procurement website or other appropriate websites. Additionally, public bodies shall publish in a newspaper of general circulation in the area in which the contract is to be performed so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities. In addition, proposals may be solicited directly from potential contractors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity; and

3. For goods, nonprofessional services, and insurance, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. The offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror; or

4. For professional services, the public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal

interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. In accordance with § 2.2-4342, proprietary information from competing offerors shall not be disclosed to the public or to competitors. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations. At the conclusion of discussion, outlined in this subdivision, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable and pursuant to contractual terms and conditions acceptable to the public body, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, a public body may award contracts to more than one offeror.

Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

B. Multiphase professional services contracts satisfactory and advantageous to the completion of large, phased, or long-term projects may be negotiated and awarded based on a fair and reasonable price for the first phase only, where the completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to entering into any such contract, the public body shall (i) state the anticipated intended total scope of the project and (ii) determine in writing that the nature of the work is such that the best interests of the public body require awarding the contract.

For the purposes of subdivision A 1, "experience modification factor" means a value assigned to an employer as determined by a rate service organization in accordance with its uniform experience rating plan required to be filed pursuant to subsection D of § 38.2-1913.

2013, cc. 518, 540, 543, 583; 2014, cc. 217, 630; 2015, cc. 350, 570, 760, 776; 2016, cc. 174, 175, 295, 362, 754.

Article 2 - CONTRACT FORMATION AND ADMINISTRATION

§ 2.2-4303. Methods of procurement

A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services set forth in § 2.2-4302.2. The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 2.2-4306;

2. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property;

3. By any governing body of a locality with a population in excess of 100,000, provided that the locality has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis and shall otherwise be in compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § 2.2-4302.2; or

4. As otherwise provided in § 2.2-4308.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the Department of General Services' central electronic procurement website or other appropriate websites, and in addition, public bodies may publish in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

G. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for:

1. Goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed $100,000; and

2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed $25,000.

However, such small purchase procedures shall provide for competition wherever practicable.

Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed $60,000.

Where small purchase procedures are adopted for construction, the procedures shall not waive compliance with the Uniform State Building Code.

For state public bodies, purchases under this subsection that are expected to exceed $30,000 shall require the (a) written informal solicitation of a minimum of four bidders or offerors and (b) posting of a public notice on the Department of General Services' central electronic procurement website or other appropriate websites. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

H. Upon a determination made in advance by a public body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction, including online public auctions. Purchase of information technology and telecommunications goods and nonprofessional services from a public auction sale shall be permitted by any authority, department, agency, or institution of the Commonwealth if approved by the Chief Information Officer of the Commonwealth. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

I. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

1982, c. 647, § 11-41; 1985, c. 164; 1986, cc. 332, 559; 1987, c. 456; 1988, cc. 40, 640; 1989, c. 296; 1991, c. 73; 1993, c. 242; 1996, cc. 827, 965, 1019; 1999, c. 178; 2000, cc. 637, 647, 664, 692; 2001, cc. 395, 844; 2003, cc. 644, 895; 2004, cc. 706, 874, 906; 2005, c. 394; 2006, cc. 464, 510; 2008, c. 78; 2009, c. 123; 2010, c. 567; 2011, cc. 332, 594, 612, 681; 2012, cc. 805, 836; 2013, cc. 502, 583; 2015, cc. 760, 776; 2016, cc. 228, 604.

§ 2.2-4303.1. (Effective until October 1, 2016) Architectural and professional engineering term contracting; limitations

A. A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

B. The sum of all projects performed in a one-year contract term shall not exceed $500,000, except that for:

1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract term shall not exceed $1 million;

2. Any locality with a population in excess of 78,000, or any authority, sanitation district, metropolitan planning organization, transportation district commission, or planning district commission, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed $6 million and those awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed $1.5 million;

3. Architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term shall not exceed $2 million. Such contract may be renewable for two additional one-year terms at the option of the Director; and

4. Environmental location, design, and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach $5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year contract term shall not exceed $5 million.

C. Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the Request for Proposal so states and (ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

D. The fee for any single project shall not exceed $100,000; however, for architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed $500,000, except that for:

1. A state agency as defined in § 2.2-4347, the project fee shall not exceed $200,000, as may be determined by the Director of the Department of General Services or as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.); and

2. Any locality with a population in excess of 78,000, or any authority, transportation district commission, or sanitation district, or any city within Planning District 8, the project fee shall not exceed $2.5 million.

The limitations imposed upon single-project fees pursuant to this subsection shall not apply to environmental, location, design, and inspection work regarding highways and bridges by the Com-

missioner of Highways or architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation.

E. For the purposes of subsection B, any unused amounts from one contract term shall not be carried forward to any additional term, except as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.).

2015, cc. 570, 760, 776; 2016, c. 294.

§ 2.2-4303.1. (Effective October 1, 2016) Architectural and professional engineering term contracting; limitations

A. A contract for architectural or professional engineering services relating to multiple construction projects may be awarded by a public body, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first.

Such contracts may be renewable for four additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each project performed.

B. The sum of all projects performed in a one-year contract term shall not exceed $500,000, except that for:

1. A state agency, as defined in § 2.2-4347, the sum of all projects performed in a one-year contract term shall not exceed $1 million;

2. Any locality with a population in excess of 78,000, or any authority, sanitation district, metropolitan planning organization, transportation district commission, or planning district commission, or any city within Planning District 8, the sum of all projects performed in a one-year contract term shall not exceed $6 million and those awarded for any airport as defined in § 5.1-1 and aviation transportation projects, the sum of all such projects shall not exceed $1.5 million;

3. Architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation, the sum of all projects in a one-year contract term shall not exceed $2 million. Such contract may be renewable for two additional one-year terms at the option of the Director; and

4. Environmental location, design, and inspection work regarding highways and bridges by the Commissioner of Highways, the initial contract term shall be limited to two years or when the cumulative total project fees reach $5 million, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the Commissioner, and the sum of all projects in each one-year contract term shall not exceed $5 million.

C. Competitive negotiations for such architectural or professional engineering services contracts may result in awards to more than one offeror, provided (i) the Request for Proposal so states and

(ii) the public body has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures shall prohibit requiring the selected contractors to compete for individual projects based on price.

D. The fee for any single project shall not exceed $100,000; however, for architectural or engineering services for airports as defined in § 5.1-1 and aviation transportation projects, the project fee of any single project shall not exceed $500,000, except that for:

1. A state agency as defined in § 2.2-4347, the project fee shall not exceed $200,000, as may be determined by the Director of the Department of General Services or as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.); and

2. Any locality with a population in excess of 78,000, or any authority, transportation district commission, or sanitation district, or any city within Planning District 8, the project fee shall not exceed $2.5 million.

The limitations imposed upon single-project fees pursuant to this subsection shall not apply to environmental, location, design, and inspection work regarding highways and bridges by the Commissioner of Highways or architectural and engineering services for rail and public transportation projects by the Director of the Department of Rail and Public Transportation.

E. For the purposes of subsection B, any unused amounts from one contract term shall not be carried forward to any additional term, except as otherwise provided by the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.).

2016, c. 294.

§ 2.2-4303.2. Job order contracting; limitations

A. A job order contract may be awarded by a public body for multiple jobs, provided (i) the jobs require similar experience and expertise, (ii) the nature of the jobs is clearly identified in the solicitation, and (iii) the contract is limited to a term of one year or when the cumulative total project fees reach the maximum authorized in this section, whichever occurs first. Contractors may be selected through either competitive sealed bidding or competitive negotiation.

B. Such contracts may be renewable for two additional one-year terms at the option of the public body. The fair and reasonable prices as negotiated shall be used in determining the cost of each job performed, and the sum of all jobs performed in a one-year contract term shall not exceed $5 million. Individual job orders shall not exceed $500,000.

C. For the purposes of this section, any unused amounts from one contract term shall not be carried forward to any additional term.

D. Order splitting with the intent of keeping a job order under the maximum dollar amounts prescribed in subsection B is prohibited.

E. No public body shall issue or use a job order, under a job order contract, solely for the purpose of receiving professional architectural or engineering services that constitute the practice of architecture or the practice of engineering as those terms are defined in § 54.1-400. However, professional architectural or engineering services may be included on a job order where such professional services (i) are incidental and directly related to the job, (ii) do not exceed $25,000 per job order, and (iii) do not exceed $75,000 per contract term.

F. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass.

2015, cc. 760, 776.

§ 2.2-4304. Joint and cooperative procurement

A. Any public body may participate in, sponsor, conduct, or administer a joint procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction.

B. In addition, a public body may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies, except for:

1. Contracts for architectural or engineering services; or

2. Construction, except for the installation of artificial turf and track surfaces, including all associated and necessary construction, which shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303.

In instances where any authority, department, agency, or institution of the Commonwealth desires to purchase information technology and telecommunications goods and services from another public body's contract and the procurement was conducted on behalf of other public bodies, such purchase shall be permitted if approved by the Chief Information Officer of the Commonwealth. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions A 9 and A 10 of § 2.2-4343 shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

C. Subject to the provisions of §§ 2.2-1110, 2.2-1111, 2.2-1120 and 2.2-2012, any authority, department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or

administer a joint procurement arrangement in conjunction with public bodies, private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services, and construction.

A public body may purchase from any authority, department, agency or institution of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in this chapter and the administrative policies and procedures established to implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and Supply.

Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement shall be permitted if approved by the Chief Information Officer of the Commonwealth. However, such acquisitions shall be procured competitively.

Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

D. As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. Any authority, department, agency, or institution of the Commonwealth may purchase goods and nonprofessional services, other than telecommunications and information technology, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the director of the Division of Purchases and Supply of the Department of General Services;

2. Any authority, department, agency, or institution of the Commonwealth may purchase telecommunications and information technology goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the Chief Information Officer of the Commonwealth; and

3. Any county, city, town, or school board may purchase goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government.

1982, c. 647, § 11-40; 1984, c. 330; 1987, c. 583; 1991, c. 645; 1996, cc. 261, 280, 1019; 2001, c. 844; 2003, cc. 651, 895, 981, 1021; 2004, cc. 874, 906, 911, 936; 2005, c. 394; 2006, c. 100; 2010, c. 736; 2015, cc. 352, 760, 776; 2016, c. 629.

§ 2.2-4305. Competitive procurement by localities on state-aid projects

No contract for the construction of any building or for an addition to or improvement of an existing building by any local governing body or subdivision thereof for which state funds of not more than $50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under subsection D of § 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

1982, c. 647, § 11-41.1; 1983, c. 436; 1987, c. 456; 1989, c. 296; 1997, c. 163; 2001, c. 844; 2010, c. 382.

§ 2.2-4306. Design-build or construction management contracts for Commonwealth authorized

A. Notwithstanding any other provisions of law, the Commonwealth may enter into contracts on a fixed price design-build basis or construction management basis in accordance with the provisions of this section and § 2.2-1502. Procedures to implement this section and any changes to such procedures shall be adopted by the Secretary of Administration after a public hearing and reviewed by the House Committee on Appropriations and the Senate Committee on Finance.

B. Procurement of construction by the design-build method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.

C. Design-build contracts may be used by the Commonwealth only for those types of construction projects designated in the procedures adopted by the Secretary of Administration to implement this section.

1983, c. 615, § 11-41.2; 1987, cc. 218, 474; 1988, c. 829; 2001, c. 844.

§ 2.2-4307. Fixed-price or not-to-exceed-price design-build and construction management contracts for juvenile correctional facilities authorized

Notwithstanding the provisions of § 2.2-4306, but subject to the procedures adopted by the Secretary of Administration to implement the provisions of that section, the Commonwealth may enter into contracts for juvenile correctional facilities on a fixed-price or not-to-exceed-price design-build basis or construction management basis, including related leases, lease/purchase contracts, agreements relating to the sale of securities to finance such facilities, and similar financing agreements.

1996, cc. 795, 942, § 11-41.2:02; 2001, c. 844.

§ 2.2-4308. Design-build or construction management contracts for public bodies other than the Commonwealth; eligibility requirements; award of contract; records to be kept

A. While the competitive sealed bid process remains the preferred method of construction procurement for public bodies in the Commonwealth, any public body other than the Commonwealth may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the public body complies with the requirements of this section and has implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing design-build or construction management contracts.

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.

Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the public body shall:

1. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation and award of design-build and construction management contracts. Such procedures shall be consistent with those described in this chapter for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. Such procedures for:

a. Design-build construction projects shall include a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department of General Services for state agencies.

b. Construction management projects shall include selection procedures and required construction management contract terms consistent with the procedures as adopted by the Secretary of Administration.

2. Have documented in writing that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

B. The contract shall be awarded to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposal.

1996, c. 962, § 11-41.2:2; 2000, c. 29; 2001, c. 844; 2004, c. 706; 2006, c. 510; 2011, cc. 594, 681.

§ 2.2-4308.1. Purchase of owner-controlled insurance in construction projects

A. Notwithstanding any other provision of law to the contrary, a public body may purchase at its expense an owner-controlled insurance program in connection with any public construction contract where the amount of the contract or combination of contracts is more than $100 million, provided that no single contract valued at less than $50 million shall be combined pursuant to this section. The public body shall provide notice if it intends to use an owner-controlled insurance program, including the specific coverages of such program, in any request for proposal, invitation to bid, or other applicable procurement documents.

B. A public body shall not require a provider of architecture or professional engineering services to participate in the owner-controlled insurance program, except to the extent that the public body may elect to secure excess coverage. No contractor or subcontractor shall be required to provide insurance coverage for a construction project if that specified coverage is included in an owner-controlled insurance program in which the contractor or subcontractor is enrolled.

C. For the purposes of this section, "owner-controlled insurance program" means a consolidated insurance program or series of insurance policies issued to a public body that may provide for some or all of the following types of insurance coverage for any contractor or subcontractor working on or at a public construction contract or combination of such contracts: general liability, property damage, workers' compensation, employer's liability, pollution or environmental liability, excess or umbrella liability, builder's risk, and excess or contingent professional liability.

2006, cc. 569, 605.

§ 2.2-4308.2. Registration and use of federal employment eligibility verification program required; debarment

A. For purposes of this section, "E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the U.S. Department of Homeland Security, or a successor work authorization program designated by the U.S. Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

B. Any employer with more than an average of 50 employees for the previous 12 months entering into a contract in excess of $50,000 with any agency of the Commonwealth to perform work or provide services pursuant to such contract shall register and participate in the E-Verify program to verify information and work authorization of its newly hired employees performing work pursuant to such public contract.

C. Any such employer who fails to comply with the provisions of subsection B shall be debarred from contracting with any agency of the Commonwealth for a period up to one year. Such debarment shall cease upon the employer's registration and participation in the E-Verify program.

2011, cc. 573, 583.

§ 2.2-4309. Modification of the contract

A. A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than twenty-five percent of the amount of the contract or $50,000, whichever is greater, without the advance written approval of the Governor or his designee, in the case of state agencies, or the governing body, in the case of political subdivisions. In no event may the amount of any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

B. Any public body may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.

C. Nothing in this section shall prevent any public body from placing greater restrictions on contract modifications.

D. The provisions of this section shall not limit the amount a party to a public contract may claim or recover against a public body pursuant to § 2.2-4363 or any other applicable statute or regulation. Modifications made by a political subdivision that fail to comply with this section are voidable at the discretion of the governing body, and the unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in § 2.2-4363.

1982, c. 647, §§ 11-45, 11-55; 1984, c. 764; 1985, c. 286; 1987, cc. 194, 248; 1989, c. 235; 1990, c. 395; 1991, c. 175; 1993, cc. 110, 505, 638, 971; 1996, cc. 145, 897, 902, 950, 1038; 1998, cc. 222, 619, 666, 697, 791; 1999, cc. 160, 194, 1021, 1024; 2000, cc. 242, 637, 664, 696, 927; 2001, c. 844; 2015, c. 569.

§ 2.2-4310. Discrimination prohibited; participation of small, women-owned, minority-owned, and service disabled veteran-owned business and employment services organization

A. In the solicitation or awarding of contracts, no public body shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, status as a service disabled veteran, or any other basis prohibited by state law relating to discrimination in employment. Whenever solicitations are made, each public body shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity, which list shall include all companies and organizations certified by the Department.

B. All public bodies shall establish programs consistent with this chapter to facilitate the participation of small businesses, businesses owned by women, minorities, and service disabled veterans, and employment services organizations in procurement transactions. The programs established shall be in writing and shall comply with the provisions of any enhancement or remedial measures authorized by the Governor pursuant to subsection C or, where applicable, by the chief executive of a local governing body pursuant to § 15.2-965.1, and shall include specific plans to achieve any goals established therein. State agencies shall submit annual progress reports

on (i) small, women-owned, and minority-owned business procurement, (ii) service disabled veteran-owned business procurement, and (iii) employment services organization procurement to the Department of Small Business and Supplier Diversity in a form specified by the Department of Small Business and Supplier Diversity. Contracts and subcontracts awarded to employment services organizations shall be credited toward a contractor's small business, women-owned, and minority-owned business contracting and subcontracting goals. The Department of Small Business and Supplier Diversity shall make information on service disabled veteran-owned procurement available to the Department of Veterans Services upon request.

C. Whenever there exists (i) a rational basis for small business or employment services organization enhancement or (ii) a persuasive analysis that documents a statistically significant disparity between the availability and utilization of women-owned and minority-owned businesses, the Governor is authorized and encouraged to require state agencies to implement appropriate enhancement or remedial measures consistent with prevailing law.

D. In awarding a contract for services to a small, women-owned, or minority-owned business that is certified in accordance with § 2.2-1606, or to a business identified by a public body as a service disabled veteran-owned business where the award is being made pursuant to an enhancement or remedial program as provided in subsection C, the public body shall include in every such contract of more than $10,000 the following:

"If the contractor intends to subcontract work as part of its performance under this contract, the contractor shall include in the proposal a plan to subcontract to small, women-owned, minority-owned, and service disabled veteran-owned businesses."

E. In the solicitation or awarding of contracts, no state agency, department or institution shall discriminate against a bidder or offeror because the bidder or offeror employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest.

F. As used in this section:

"Employment services organization" means an organization that provides community-based employment services to individuals with disabilities that is an approved Commission on Accreditation of Rehabilitation Facilities (CARF) accredited vendor of the Department for Aging and Rehabilitative Services.

"Minority individual" means an individual who is a citizen of the United States or a legal resident alien and who satisfies one or more of the following definitions:

1. "African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

2. "Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to

Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana Islands, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, or Sri Lanka and who is regarded as such by the community of which this person claims to be a part.

3. "Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be a part.

4. "Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be a part or who is recognized by a tribal organization.

"Minority-owned business" means a business that is at least 51 percent owned by one or more minority individuals who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more minority individuals, or any historically black college or university as defined in § 2.2-1604, regardless of the percentage ownership by minority individuals or, in the case of a corporation, partnership, or limited liability company or other entity, the equity ownership interest in the corporation, partnership, or limited liability company or other entity.

"Service disabled veteran" means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

"Service disabled veteran business" means a business that is at least 51 percent owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both the management and daily business operations are controlled by one or more individuals who are service disabled veterans.

"Small business" means a business, independently owned and controlled by one or more individuals who are U.S. citizens or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of $10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

"Women-owned business" means a business that is at least 51 percent owned by one or more women who are U.S. citizens or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51 percent of the equity ownership interest is owned by one or more women who are U.S. citizens or legal resident aliens, and both the management and daily business operations are controlled by one or more women.

1982, c. 647, §§ 11-44, 11-48; 1984, c. 279; 2000, c. 628; 2001, c. 844; 2003, c. 226; 2004, cc. 865, 891; 2006, cc. 831, 921; 2007, c. 787; 2008, cc. 521, 767; 2009, c. 869; 2013, c. 482; 2015, cc. 733, 765, 775; 2016, c. 525.

§ 2.2-4310.1. Awards as a result of any authorized enhancement or remedial measure; requirements

A. Any enhancement or remedial measure authorized by the Governor pursuant to subsection C of § 2.2-4310 for state public bodies shall include a provision that the procurement shall be conducted in accordance with such enhancement or remedial measure for businesses certified by the Department of Small Business and Supplier Diversity. If such enhancement or remedial measure provides for an award priority for such businesses, then the contract shall be awarded in accordance with such priority if such priority business participated in the solicitation and requirements are met. If an award is not made based on the foregoing, then the contract shall be awarded in accordance with the next award priority and so on until a contract is awarded based on the established award priority.

B. If an award is not made pursuant to subsection A, the procurement award may be made without regard to such enhancement or remedial measure.

2016, c. 681.

§ 2.2-4310.2. State agency's goals for participation by small businesses; requirements

Any state agency's goals under § 2.2-4310 for participation by small businesses shall include within the goals a minimum of three percent participation by service disabled veteran businesses as defined in §§ 2.2-2001 and 2.2-4310 when contracting for information technology goods and services.

As used in this section, "information technology" and "state agency" mean the same as those terms are defined in § 2.2-2006.

2016, c. 682.

§ 2.2-4310.3. Fiscal data pertaining to certain enhancement or remedial measures

The Department of General Services shall make available a dashboard of purchase order reports from the Commonwealth's statewide electronic procurement system known as eVA. The dashboard shall include aggregated data showing (i) current fiscal year purchase orders, (ii) purchase orders from the previous fiscal year, and (iii) other relevant data derived from any enhancement or remedial measure implemented by the Governor pursuant to subsection C of § 2.2-4310.

2016, c. 578.

§ 2.2-4311. Employment discrimination by contractor prohibited; required contract provisions

All public bodies shall include in every contract of more than $10,000 the following provisions:

1. During the performance of this contract, the contractor agrees as follows:

a. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

b. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2. The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

1982, c. 647, § 11-51; 2000, c. 628; 2001, c. 844.

§ 2.2-4311.1. Compliance with federal, state, and local laws and federal immigration law; required contract provisions

All public bodies shall provide in every written contract that the contractor does not, and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

2008, cc. 598, 702.

§ 2.2-4311.2. Compliance with state law; foreign and domestic businesses authorized to transact business in the Commonwealth

A. All public bodies shall include in every written contract a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

B. Pursuant to competitive sealed bidding or competitive negotiation, all public bodies shall include in the solicitation a provision that requires a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 to include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder

or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

C. Any bidder or offeror described in subsection B that fails to provide the required information shall not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the Director of the Department of General Services or his designee or by the chief executive of a local governing body.

D. Any business entity described in subsection A that enters into a contract with a public body pursuant to this chapter shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

E. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

2010, c. 634.

§ 2.2-4312. Drug-free workplace to be maintained by contractor; required contract provisions

All public bodies shall include in every contract over $10,000 the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with this chapter, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

2000, c. 417, § 11-51.1; 2001, c. 844.

§ 2.2-4313. Petition for recycled goods and products; periodic review of procurement standards

A. Any person who believes that particular goods or products with recycled content are functionally equivalent to the same goods or products produced from virgin materials may petition the Department of General Services or other appropriate agency of the Commonwealth to include the recycled goods or products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation that establishes that the goods or products (i) contain recycled content and (ii) can meet the performance standards set forth in the applicable specifications. If the Department of General Services or other agency of the Commonwealth that receives the petition determines that the documentation demonstrates that the goods or products with recycled content will meet the performance standards set forth in the applicable specifications, it shall incorporate the goods or products into its procurement process.

B. The Department of General Services and all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of goods and products with recycled content and shall, in developing new procedures and specifications, encourage the use of goods and products with recycled content.

1993, c. 223, § 11-41.01; 2001, c. 844.

§ 2.2-4314. Petition for procurement of less toxic goods and products; periodic review of procurement standards

A. As used in this section:

"Goods and products" means goods and products that are used or consumed by an agency of the Commonwealth in the performance of its statutory functions. The term shall include, but not be limited to (i) cleaning materials, (ii) paints and coatings, (iii) solvents, (iv) adhesives, (v) inks, and (vi) pesticides and herbicides. The term shall not include: (i) fuels, (ii) food and beverages, (iii) furniture and fixtures, (iv) tobacco products, and (v) packaging and containers.

"Less toxic goods and products" means goods and products that (i) are functionally equivalent to and (ii) contain, emit, produce, or generate, less toxic or hazardous substances, or other toxic or hazardous substances that pose less of a hazard to public health and safety, or both, than goods and products procured by the Department of General Services or other agency of the Commonwealth.

"Toxic or hazardous substance" means (i) a chemical identified on the Toxic Chemical List established pursuant to § 313 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq. (P.L. 99-499) or (ii) a chemical listed pursuant to §§ 101 (14) or 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (P.L. 92-500).

B. Any person who manufactures, sells, or supplies goods or products may petition the Department of General Services or other appropriate agency of the Commonwealth for the inclusion of the less toxic goods and products in its procurement process. The petitioner shall submit, prior to or during the procurement process, documentation that establishes that the goods or products

meet the performance standards set forth in the applicable specifications. If the Department of General Services or other agency of the Commonwealth that receives the petition determines that the documentation establishes that the less toxic goods or products meet the performance standards set forth in the applicable specifications, it shall incorporate such goods or products into its procurement process.

C. The Department of General Services and all agencies of the Commonwealth shall review and revise their procurement procedures and specifications on a continuing basis to encourage the use of less toxic goods and products. However, nothing in this section shall require the Department or other agencies to purchase, test or evaluate any particular goods or products. Nor shall this section require the Department to purchase goods or products other than those that would be purchased under regular procurement procedures.

1994, c. 946, § 11-41.02; 2001, c. 844.

§ 2.2-4315. Use of brand names

Unless otherwise provided in the Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named and shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the public body in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

1982, c. 647, § 11-49; 2001, c. 844.

§ 2.2-4316. Comments concerning specifications

Every public body awarding public contracts shall establish procedures whereby comments concerning specifications or other provisions in Invitations to Bid or Requests for Proposal can be received and considered prior to the time set for receipt of bids or proposals or award of the contract.

1982, c. 647, § 11-50; 2001, c. 844.

§ 2.2-4317. Prequalification generally; prequalification for construction

A. Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.

B. Any prequalification of prospective contractors for construction by a public body shall be pursuant to a prequalification process for construction projects adopted by the public body. The process shall be consistent with the provisions of this section.

The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective

contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. The form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 2.2-4342.

In all instances in which the public body requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.

At least 30 days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the public body shall advise in writing each contractor who submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to the contractor shall state the reasons for the denial of prequalification and the factual basis of such reasons.

A decision by a public body denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in § 2.2-4357.

C. A public body may deny prequalification to any contractor only if the public body finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the public body shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the public body has not contracted with a contractor in any prior construction contracts, the public body may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. A public body may not utilize this provision to deny prequalification unless the facts underlying

such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (§ 2.2-4367 et seq.) of this chapter, (ii) the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), (iii) Chapter 4.2 (§ 59.1-68.6 et seq.) of Title 59.1, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, agency of another state or agency of the federal government; and

7. The contractor failed to provide to the public body in a timely manner any information requested by the public body relevant to subdivisions 1 through 6 of this subsection.

D. If a public body has a prequalification ordinance that provides for minority participation in municipal construction contracts, that public body may also deny prequalification based on minority participation criteria. However, nothing herein shall authorize the adoption or enforcement of minority participation criteria except to the extent that such criteria, and the adoption and enforcement thereof, are in accordance with the Constitution and laws of the United States and the Commonwealth.

E. A state public body shall deny prequalification to any contractor who fails to register and participate in the E-Verify program as required by § 2.2-4308.2.

F. The provisions of subsections B, C, and D shall not apply to prequalification for contracts let under § 33.2-209, 33.2-214, or 33.2-221.

1982, c. 647, § 11-46; 1994, c. 918; 1995, c. 527; 2001, c. 844; 2007, c. 154; 2011, cc. 573, 583.

§ 2.2-4318. Negotiation with lowest responsible bidder

Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted, except that if the bid from the lowest responsible bidder exceeds available funds, the public body may negotiate with the apparent low bidder to obtain a contract price within available funds. However, the negotiation may be undertaken only under conditions and procedures described in writing and approved by the public body prior to issuance of the Invitation to Bid and summarized therein.

1982, c. 647, § 11-53; 2001, c. 844.

§ 2.2-4319. Cancellation, rejection of bids; waiver of informalities

A. An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of

the contract file. A public body shall not cancel or reject an Invitation to Bid, a Request for Proposal, any other solicitation, bid or proposal pursuant to this section solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

B. A public body may waive informalities in bids.

1982, c. 647, § 11-42; 1998, c. 753; 2001, c. 844.

§ 2.2-4320. Exclusion of insurance bids prohibited

Notwithstanding any other provision of law, no insurer licensed to transact the business of insurance in the Commonwealth or approved to issue surplus lines insurance in the Commonwealth shall be excluded from presenting an insurance bid proposal to a public body in response to a request for proposal or an invitation to bid. Nothing in this section shall preclude a public body from debarring a prospective insurer pursuant to § 2.2-4321.

1996, c. 989, § 11-44.1; 2001, c. 844.

§ 2.2-4321. Debarment

Prospective contractors may be debarred from contracting for particular types of supplies, services, insurance or construction, for specified periods of time. Any debarment procedure shall be established in writing for state agencies and institutions by the agency designated by the Governor and for political subdivisions by their governing bodies. Any debarment procedure may provide for debarment on the basis of a contractor's unsatisfactory performance for a public body.

1982, c. 647, § 11-46.1; 2001, c. 844.

§ 2.2-4321.1. Prohibited contracts; exceptions; determination by Department of Taxation; appeal; remedies

A. No state agency shall contract for goods or services with a nongovernmental source if the source, or any affiliate of the source, is subject to the provisions of (i) § 58.1-612 and fails or refuses to collect and remit the tax on its sales delivered by any means to locations within the Commonwealth or (ii) Article 2 (§ 58.1-320 et seq.) or Article 10 (§ 58.1-400 et seq.) of Chapter 3 of Title 58.1 and fails or refuses to remit any tax due thereunder. The provisions of clause (ii) shall not apply to any person that has (a) entered into a payment agreement with the Department of Taxation to pay the tax and is not delinquent under the terms of the agreement or (b) appealed the assessment of the tax in accordance with law and such appeal is pending.

B. A state agency may contract for goods or services with a source prohibited under subsection A in the event of an emergency or where the nongovernmental source is the sole source of such goods or services.

C. The determination of whether a source is a prohibited source shall be made by the Department of Taxation after providing the prohibited source with notice and an opportunity to respond to the proposed determination. The Department of Taxation shall notify the Department of General Services of its determination.

D. The Department of General Services shall post public notice of all prohibited sources on its public internet procurement website and on other appropriate websites.

E. The remedies provided in Article 5 (§ 2.2-4357 et seq.) of this chapter shall not apply to any determination made pursuant to this section and the sole remedy for any adverse determination shall be as provided in subsection F.

F. Any source aggrieved by a determination of the Department of Taxation made under this section may apply to the Tax Commissioner for correction of the determination. The Tax Commissioner shall respond within 30 days of receipt of the application for corrective action. Within 10 days after receipt of the Tax Commissioner's response, the aggrieved source may appeal to the Circuit Court for the City of Richmond. If it is determined that the determination of the Department of Taxation was arbitrary, capricious, or not in accordance with law, the sole relief shall be restoration of the source's eligibility to contract with state agencies. No claim for damages or attorney's fees shall be awarded.

G. Any action of the Department of Taxation, the Department of General Services, or of any state agency under this section shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

H. For the purposes of this section, "state agency" means any authority, board, department, instrumentality, institution, agency or other unit of state government. State agency shall not include any public institution of higher education or any county, city or town or any local or regional governmental authority.

2003, cc. 994, 1006; 2006, c. 408.

§ 2.2-4321.2. Public works contract requirements

A. As used in this section:

"Public works" means the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property owned, used, or leased by a state agency.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" shall not include any county, city, or town.

B. Except as provided in subsection F or as required by federal law, each state agency, when engaged in procuring products or services or letting contracts for construction, manufacture, maintenance, or operation of public works paid for in whole or in part by state funds, or when overseeing or administering such procurement, construction, manufacture, maintenance, or operation, shall ensure that neither the state agency nor any construction manager acting on behalf of the state agency shall, in its bid specifications, project agreements, or other controlling documents:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related public works projects; or

2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related public works projects.

Nothing in this subsection shall prohibit contractors or subcontractors from voluntarily entering into agreements described in subdivision 1.

C. A state agency issuing grants, providing financial assistance, or entering into cooperative agreements for the construction, manufacture, maintenance, or operation of public works shall ensure that neither the bid specifications, project agreements, nor other controlling documents therefor awarded by recipients of grants or financial assistance or by parties to cooperative agreements, nor those of any construction manager acting on behalf of such recipients, shall:

1. Require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or related projects; or

2. Otherwise discriminate against bidders, offerors, contractors, subcontractors, or operators for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related projects.

D. If an awarding authority, a recipient of grants or financial assistance, a party to a cooperative agreement, or a construction manager acting on behalf of any of them performs in a manner contrary to the provisions of subsection B or C, the state agency awarding the contract, grant, or assistance shall be entitled to injunctive relief to prevent any violation of this section.

E. Any interested party, which shall include a bidder, offeror, contractor, subcontractor, or operator, shall have standing to challenge any bid specification, project agreement, neutrality agreement, controlling document, grant, or cooperative agreement that violates the provisions of this section. Furthermore, such interested party shall be entitled to injunctive relief to prevent any violation of this section.

F. The provisions of this section shall not:

1. Apply to any public-private agreement for any construction or infrastructure project in which the private body, as a condition of its investment or partnership with the state agency, requires that the private body have the right to control its labor relations policy and perform all work associated with such investment or partnership in compliance with all collective bargaining agreements to which the private party is a signatory and is thus legally bound with its own employees and the employees of its contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C. § 151 et seq., or the Railway Labor Act, 45 U.S.C. § 151 et seq.;

2. Prohibit an employer or any other person covered by the National Labor Relations Act or the Railway Labor Act from entering into agreements or engaging in any other activity protected by law; or

3. Be interpreted to interfere with the labor relations of persons covered by the National Labor Relations Act or the Railway Labor Act.

2012, cc. 685, 732.

§ 2.2-4322. Acceptance of bids submitted to the Department of Transportation

In a procurement by the Department of Transportation by competitive sealed bidding for highway construction and maintenance contracts, the Department may accept bids in response to an Invitation to Bid at the Department's central office or at district offices or other satellite locations designated in the Invitation to Bid, in accordance with specifications adopted by the Department. An Invitation to Bid may authorize agents of the Department to accept from bidders on a voluntary basis a supplemental submission referencing the total bid amount on a form prescribed by the Department. Information contained in any supplemental submission may be made available to the public by the Department after the time for receiving bids has expired and before the public opening and announcement of all sealed bids.

1997, c. 164, § 11-45.1; 2001, c. 844.

§ 2.2-4323. Purchase programs for recycled goods; agency responsibilities

A. All state agencies shall implement a purchase program for recycled goods and shall coordinate their efforts so as to achieve the goals and objectives established in subsection C as well as those set forth in §§ 10.1-1425.6, 10.1-1425.7, 10.1-1425.8, 2.2-4313, 2.2-4324, and 2.2-4326.

B. The Department of Environmental Quality shall advise the Department of General Services concerning the designation of recycled goods. In cooperation with the Department of General Services, the Department of Environmental Quality shall increase the awareness of state agencies as to the benefits of using such products.

C. The Department of General Services shall:

1. Ensure that the Commonwealth's procurement guidelines for state agencies promote the use of recycled goods.

2. Promote the Commonwealth's interest in the use of recycled products to vendors.

3. Make agencies aware of the availability of recycled goods, including those that use post-consumer and other recovered materials processed by Virginia-based companies.

D. All state agencies shall, to the greatest extent possible, adhere to the procurement program guidelines for recycled products to be established by the Department of General Services.

1994, c. 553, § 11-47.01; 2001, c. 844; 2011, cc. 594, 681.

§ 2.2-4323.1. (Effective July 1, 2017) Purchase of flags of the United States and the Commonwealth by public bodies

Notwithstanding any provision of law to the contrary, whenever a state or local public body or school division purchases a flag of the United States or a flag of the Commonwealth for public use,

such flag shall be made in the United States from articles, materials, or supplies that are grown, produced, and manufactured in the United States, if available.

2016, cc. 289, 297.

§ 2.2-4324. Preference for Virginia products with recycled content and for Virginia firms

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

D. For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

1982, c. 647, § 11-47; 1993, c. 109; 2001, cc. 323, 844; 2005, c. 894; 2011, c. 343.

§ 2.2-4325. Preference for Virginia coal used in state facilities

In determining the award of any contract for coal to be purchased for use in state facilities with state funds, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsive and responsible bidder offering coal mined in Virginia so long as its bid price is not more than four percent greater than the bid price of the low responsive and responsible bidder offering coal mined elsewhere.

1987, cc. 81, 91, § 11-47.1; 2001, c. 844.

§ 2.2-4326. Preference for recycled paper and paper products used by state agencies

A. In determining the award of any contract for paper and paper products to be purchased for use by agencies of the Commonwealth, the Department of General Services shall procure using competitive sealed bidding and shall award to the lowest responsible bidder offering recycled paper and paper products of a quality suitable for the purpose intended, so long as the bid price is not more than ten percent greater than the bid price of the low responsive and responsible bidder offering a product that does not qualify under subsection B.

B. For purposes of this section, recycled paper and paper products means any paper or paper products meeting the EPA Recommended Content Standards as defined in 40 C.F.R. Part 247.

1989, c. 442, § 11-47.2; 1990, cc. 449, 857; 2001, c. 844.

§ 2.2-4327. Preference for community reinvestment activities in contracts for investment of funds

Notwithstanding any other provision of law, any county, town, or city that is authorized to and has established affordable housing programs may provide by resolution that in determining the award of any contract for time deposits or investment of its funds, the treasurer or director of finance of such county, town, or city may consider, in addition to the typical criteria, the investment activities of qualifying institutions that enhance the supply of, or accessibility to, affordable housing within the jurisdiction, including the accessibility of such housing to employees of the county, town, or city or employees of the local school board. No more than 50 percent of the funds of the county, town, or city, calculated on the basis of the average daily balance of the general fund during the previous fiscal year, may be deposited or invested by considering such investment activities as a factor in the award of a contract. A qualifying institution shall meet the provisions of the Virginia Security for Public Deposits Act (§ 2.2-4400 et seq.) and all local terms and conditions for security, liquidity and rate of return.

For the purposes of this section, affordable housing means the same as that term is defined in § 15.2-2201.

1993, c. 937, § 11-47.3; 1995, c. 206; 1997, c. 176; 1999, c. 708; 2001, c. 844; 2007, c. 681.

§ 2.2-4328. Preference for local products and firms; applicability

A. The governing body of a county, city or town may, in the case of a tie bid, give preference to goods, services and construction produced in such locality or provided by persons, firms or corporations having principal places of business in the locality, if such a choice is available; otherwise the tie shall be decided by lot, unless § 2.2-4324 applies.

B. The provisions of this section shall apply only to bids submitted pursuant to a written Invitation to Bid.

1994, c. 882, § 11-47.4; 2001, c. 844.

§ 2.2-4329. Expired

Expired.

§ 2.2-4329.1. Energy forward pricing mechanisms

A. As used in this section, unless the context requires a different meaning:

"Energy" means natural gas, heating oil, propane, diesel fuel, unleaded fuel, and any other energy source except electricity.

"Forward pricing mechanism" means either: (i) a contract or financial instrument that obligates a public body to buy or sell a specified quantity of energy at a future date at a set price or (ii) an option to buy or sell the contract or financial instrument.

B. Notwithstanding any other law to the contrary but subject to available appropriation, a public body may use forward pricing mechanisms for budget risk reduction.

C. Forward pricing mechanism transactions shall be made only under the following conditions:

1. The quantity of energy affected by the forward pricing mechanism shall not exceed the estimated energy use for the public body for the same period, which shall not exceed 48 months from the trade date of the transaction; and

2. A separate account shall be established for operational energy for each public body using a forward pricing mechanism.

D. Before exercising the authority under this section, the public body shall develop written policies and procedures governing the use of forward pricing mechanisms and disclosure of the same to the public.

E. Before exercising authority under subsection B, the public body shall establish an oversight process that provides for review of the public body's use of forward pricing mechanisms. The oversight process shall include internal or external audit reviews; annual reports to, and review by, an internal investment committee; and internal management control.

2012, cc. 204, 359.

§ 2.2-4330. Withdrawal of bid due to error

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake in the bid, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a

quantity of work, labor or material made directly in the compilation of a bid that shall be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

B. One of the following procedures for withdrawal of a bid shall be selected by the public body and stated in the advertisement for bids:

1. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice; or

2. Where the public body opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the public body or designated official his original work papers, documents and materials used in the preparation of the bid at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail. The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the public body until the two-hour period has elapsed.

Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of § 2.2-4342.

C. A public body may establish procedures for the withdrawal of bids for other than construction contracts.

D. No bid shall be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

E. If a bid is withdrawn in accordance with this section, the lowest remaining bid shall be deemed to be the low bid.

F. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

G. The public body shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid. If the public body denies the withdrawal of a bid under the provisions of this section, it shall state in such notice the reasons for its decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. At the same time that the notice is provided, the public body shall return all work papers and copies thereof that have been submitted by the bidder.

1982, c. 647, § 11-54; 1985, c. 286; 1994, c. 897; 1999, c. 344; 2001, c. 844; 2011, c. 717.

§ 2.2-4331. Contract pricing arrangements

A. Except as prohibited in this section, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

B. Except in case of emergency affecting the public health, safety, or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost.

C. The following contract pricing arrangements shall not be prohibited by this section:

1. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims; or

2. A cost plus a percentage of the private investment made by a private entity as a basis for the procurement of commercial or financial consulting services related to a qualifying transportation facility under the Public-Private Transportation Act of 1995 (§ 33.2-1800 et seq.) or a qualifying project under the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.) where the commercial or financial consulting services are sought to solicit or to solicit and evaluate proposals for the qualifying transportation facility or the qualifying project. As used in this section, "private entity" and "qualifying transportation facility" mean the same as those terms are defined in § 33.2-1800 and "qualifying project" means the same as that term is defined in § 56-575.1.

1982, c. 647, § 11-43; 2001, c. 844; 2013, c. 496.

§ 2.2-4332. Workers' compensation requirements for construction contractors and subcontractors

A. No contractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth or any of its political subdivisions unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2 and (ii) provides prior to the award of contract, on a form furnished by the department, agency, or institution of the Commonwealth or political subdivision thereof, evidence of such coverage.

B. The Department of General Services shall provide the form to such departments, agencies, institutions, and political subdivisions. Failure of a department, agency, institution or political subdivision to provide the form prior to the award of contract shall waive the requirements of clause (ii) of subsection A.

C. No subcontractor shall perform any work on a construction project of a department, agency or institution of the Commonwealth unless he has obtained, and continues to maintain for the duration of such work, workers' compensation coverage required pursuant to the provisions of Chapter 8 (§ 65.2-800 et seq.) of Title 65.2.

1993, c. 642, § 11-46.3; 2001, c. 844.

§ 2.2-4333. Retainage on construction contracts

A. In any public contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment.

B. Any subcontract for a public project that provides for similar progress payments shall be subject to the provisions of this section.

1982, c. 647, § 11-56; 2001, c. 844.

§ 2.2-4334. Deposit of certain retained funds on certain contracts with local governments; penalty for failure to timely complete

A. Any county, city, town or agency thereof or other political subdivision of the Commonwealth when contracting directly with contractors for public contracts of $200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the political subdivision's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the escrow agreement form included in the Bid Proposal and Contract shall be executed and submitted to the political subdivision within fifteen calendar days after notification. If the escrow agreement form is not submitted within the fifteen-day period, the contractor shall forfeit his rights to the use of the escrow account procedure.

B. In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an escrow agreement form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The escrow agreement and all regulations adopted by the political subdivision entering into the contract shall be substantially the same as that used by the Virginia Department of Transportation.

C. This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.

D. Any such public contract for construction with a county, city, town or agency thereof or other political subdivision of the Commonwealth, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the

control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

E. Any subcontract for such public project that provides for similar progress payments shall be subject to the provisions of this section.

1989, c. 1, § 11-56.1; 2001, c. 844.

§ 2.2-4335. Public construction contract provisions barring damages for unreasonable delays declared void

A. Any provision contained in any public construction contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy.

B. Subsection A shall not be construed to render void any provision of a public construction contract that:

1. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;

2. Requires notice of any delay by the party claiming the delay;

3. Provides for liquidated damages for delay; or

4. Provides for arbitration or any other procedure designed to settle contract disputes.

C. A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it for a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitrating the claim, which percentage shall be equal to the percentage of the contractor's total delay claim that is determined through litigation or arbitration to be false or to have no basis in law or in fact.

D. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the public body shall be equal to the percentage of the contractor's total delay claim for which the public body's denial is determined through litigation or arbitration to have been made in bad faith.

1991, c. 701, § 11-56.2; 2001, cc. 324, 844.

§ 2.2-4336. Bid bonds

A. Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of $500,000 or transportation-related projects authorized under Article 2 (§

33.2-208 et seq.) of Chapter 2 of Title 33.2 that are in excess of $250,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is authorized to do business in Virginia, as a guarantee that if the contract is awarded to the bidder, he will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid.

B. For nontransportation-related construction contracts in excess of $100,000 but less than $500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317.

C. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.

D. Nothing in this section shall preclude a public body from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than $500,000 for nontransportation-related projects or $250,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

1982, c. 647, § 11-57; 1984, c. 160; 2001, c. 844; 2006, c. 925; 2011, c. 789.

§ 2.2-4337. Performance and payment bonds

A. Except as provided in subsection H, upon the award of any (i) public construction contract exceeding $500,000 awarded to any prime contractor; (ii) construction contract exceeding $500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body; (iii) construction contract exceeding $500,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding $350,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the public body the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2, such bond shall be in a form and amount satisfactory to the public body.

2. A payment bond in the sum of the contract amount. The bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in furtherance of the work provided for in the contract, and shall be conditioned upon the prompt payment for all materials furnished or labor supplied or performed in the furtherance of the work. For transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the public body.

"Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. For nontransportation-related construction contracts in excess of $100,000 but less than $500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with § 2.2-4317.

C. Each of the bonds shall be executed by one or more surety companies selected by the contractor that are authorized to do business in Virginia.

D. If the public body is the Commonwealth, or any agency or institution thereof, the bonds shall be payable to the Commonwealth of Virginia, naming also the agency or institution thereof. Bonds required for the contracts of other public bodies shall be payable to such public body.

E. Each of the bonds shall be filed with the public body that awarded the contract, or a designated office or official thereof.

F. Nothing in this section shall preclude a public body from requiring payment or performance bonds for construction contracts below $500,000 for nontransportation-related projects or $350,000 for transportation-related projects authorized under Article 2 (§ 33.2-208 et seq.) of Chapter 2 of Title 33.2 and partially or wholly funded by the Commonwealth.

G. Nothing in this section shall preclude the contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

H. The performance and payment bond requirements of subsection A for transportation-related projects that are valued in excess of $250,000 but less than $350,000 may only be waived by a public body if the bidder provides evidence, satisfactory to the public body, that a surety company has declined an application from the contractor for a performance or payment bond.

1982, c. 647, § 11-58; 1984, c. 160; 2001, c. 844; 2002, cc. 556, 643, 682; 2006, cc. 694, 925; 2011, c. 789; 2012, c. 783.

§ 2.2-4338. Alternative forms of security

A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.

B. If approved by the Attorney General in the case of state agencies, or the attorney for the political subdivision in the case of political subdivisions, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment, or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond.

C. The provisions of this section shall not apply to the Department of Transportation.

1982, c. 647, § 11-61; 1989, c. 260; 1991, c. 574; 1992, c. 765; 1996, cc. 77, 827; 2001, c. 844; 2013, c. 141.

§ 2.2-4339. Bonds on other than construction contracts

A public body may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

1982, c. 647, § 11-62; 2001, c. 844.

§ 2.2-4340. Action on performance bond

No action against the surety on a performance bond shall be brought unless within five years after completion of the work on the project to the satisfaction of the Department of Transportation, in cases where the public body is the Department of Transportation, or, in all other cases, within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect or breach of warranty that gave rise to the action.

1982, c. 647, § 11-59; 1996, c. 827; 2001, c. 844.

§ 2.2-4341. Actions on payment bonds; waiver of right to sue

A. Any claimant who has a direct contractual relationship with the contractor and who has performed labor or furnished material in accordance with the contract documents in furtherance of the work provided in any contract for which a payment bond has been given, and who has not been paid in full before the expiration of 90 days after the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, may bring an action on the payment bond to recover any amount due him for the labor or material. The obligee named in the bond need not be named a party to the action.

B. Any claimant who has a direct contractual relationship with any subcontractor but who has no contractual relationship, express or implied, with the contractor, may bring an action on the contractor's payment bond only if he has given written notice to the contractor within 90 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond shall be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

1982, c. 647, § 11-60; 2001, cc. 412, 844; 2003, c. 255; 2011, c. 544.

§ 2.2-4342. Public inspection of certain records

A. Except as provided in this section, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.

C. Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

D. Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.

E. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

F. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary.

1982, c. 647, § 11-52; 1984, c. 705; 1994, c. 918; 2001, c. 844.

Article 3 - EXEMPTIONS AND LIMITATIONS

§ 2.2-4343. Exemption from operation of chapter for certain transactions

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

1. The Virginia Port Authority in the exercise of any of its powers in accordance with Chapter 10 (§ 62.1-128 et seq.) of Title 62.1, provided the Authority implements, by policy or regulation adopted

by the Board of Commissioners, procedures to ensure fairness and competitiveness in the procurement of goods and services and in the administration of its capital outlay program. This exemption shall be applicable only so long as such policies and procedures meeting the requirements remain in effect.

2. The Virginia Retirement System for selection of services related to the management, purchase or sale of authorized investments, actuarial services, and disability determination services. Selection of these services shall be governed by the standard set forth in § 51.1-124.30.

3. The State Treasurer in the selection of investment management services related to the external management of funds shall be governed by the standard set forth in § 2.2-4514, and shall be subject to competitive guidelines and policies that are set by the Commonwealth Treasury Board and approved by the Department of General Services.

4. The Department of Social Services or local departments of social services for the acquisition of motor vehicles for sale or transfer to Temporary Assistance to Needy Families (TANF) recipients.

5. (Effective until October 1, 2016) The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant to § 23-44.1, 23-50.10:01, 23-76.1, or 23-122.1. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by §§ 23-44.1, 23-50.10:01, 23-76.1, and 23-122.1.

5. (Effective October 1, 2016) The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant to § 23.1-2210, 23.1-2306, 23.1-2604, or 23.1-2803. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by §§ 23.1-2210, 23.1-2306, 23.1-2604, and 23.1-2803.

6. (Effective until October 1, 2016) The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial, record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23-38.80.

6. (Effective October 1, 2016) The Board of the Virginia College Savings Plan for the selection of services related to the operation and administration of the Plan, including, but not limited to, contracts or agreements for the management, purchase, or sale of authorized investments or actuarial,

record keeping, or consulting services. However, such selection shall be governed by the standard set forth in § 23.1-706.

7. Public institutions of higher education for the purchase of items for resale at retail bookstores and similar retail outlets operated by such institutions. However, such purchase procedures shall provide for competition where practicable.

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § 2.2-2012 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

9. Any town with a population of less than 3,500, except as stipulated in the provisions of §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377.

10. Any county, city or town whose governing body has adopted, by ordinance or resolution, alternative policies and procedures which are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by such governing body and its agencies, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

11. Any school division whose school board has adopted, by policy or regulation, alternative policies and procedures that are (i) based on competitive principles and (ii) generally applicable to procurement of goods and services by the school board, except as stipulated in subdivision 12.

This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of § 2.2-4300, remain in effect in such school division. This provision shall not exempt any school division from any centralized purchasing ordinance duly adopted by a local governing body.

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services through competitive negotiation set forth in §§ 2.2-4303.1 and 2.2-4303.2 shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed $60,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

13. A public body that is also a utility operator may purchase services through or participate in contracts awarded by one or more utility operators that are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of services under this subdivision may deviate from the procurement procedures set forth in this chapter upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, and the contract is awarded based on competitive principles.

14. Procurement of any construction or planning and design services for construction by a Virginia nonprofit corporation or organization not otherwise specifically exempted when (i) the planning, design or construction is funded by state appropriations of $10,000 or less or (ii) the Virginia nonprofit corporation or organization is obligated to conform to procurement procedures that are established by federal statutes or regulations, whether those federal procedures are in conformance with the provisions of this chapter.

15. Purchases, exchanges, gifts or sales by the Citizens' Advisory Council on Furnishing and Interpreting the Executive Mansion.

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.).

17. The Department of Corrections in the selection of pre-release and post-incarceration services.

18. (Effective until October 1, 2016) The University of Virginia Medical Center to the extent provided by subdivision B 3 of § 23-77.4.

18. (Effective October 1, 2016) The University of Virginia Medical Center to the extent provided by subdivision A 3 of § 23.1-2213.

19. The purchase of goods and services by a local governing body or any authority, board, department, instrumentality, institution, agency or other unit of state government when such purchases

are made under a remedial plan established by the Governor pursuant to subsection C of § 2.2-4310 or by a chief administrative officer of a county, city or town pursuant to § 15.2-965.1.

20. The contract by community services boards or behavioral health authorities with an administrator or management body pursuant to a joint agreement authorized by § 37.2-512 or 37.2-615.

21. [Expired].

22. The purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed $100,000.

B. Where a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

1982, c. 647, §§ 11-35, 11-39, 11-40; 1983, c. 593; 1984, cc. 159, 330, 764, § 11-40.2; 1985, c. 74; 1986, cc. 149, 212, 559; 1987, c. 583; 1991, c. 645; 1994, cc. 661, 918; 1995, c. 18; 1996, cc. 261, 280, 683, 1019; 1997, cc. 85, 488, 785, 861, 863; 1998, cc. 121, 132; 1999, cc. 230, 248, 735, 910, § 11-40.4; 2000, cc. 29, 382, 400, 642, 644, 666, 703; 2001, cc. 392, 409, 736, 753, 774, 844; 2002, cc. 87, 478, 491, 582, 595; 2003, cc. 226, 1008; 2004, cc. 145, 865, 891; 2006, c. 656; 2007, cc. 434, 697; 2008, c. 184; 2009, cc. 737, 767; 2010, c. 694; 2011, c. 23; 2012, cc. 803, 805, 835, 836; 2013, cc. 583, 762, 794; 2015, cc. 760, 776; 2016, cc. 296, 465.

§ 2.2-4343.1. Permitted contracts with certain religious organizations; purpose; limitations

A. It is the intent of the General Assembly, in accordance with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, to authorize public bodies to enter into contracts with faith-based organizations for the purposes described in this section on the same basis as any other nongovernmental source without impairing the religious character of such organization, and without diminishing the religious freedom of the beneficiaries of assistance provided under this section.

B. For the purposes of this section, "faith-based organization" means a religious organization that is or applies to be a contractor to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

C. Public bodies, in procuring goods or services, or in making disbursements pursuant to this section, shall not (i) discriminate against a faith-based organization on the basis of the organization's religious character or (ii) impose conditions that (a) restrict the religious character of the

faith-based organization, except as provided in subsection F, or (b) impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. Public bodies shall ensure that all invitations to bid, requests for proposals, contracts, and purchase orders prominently display a nondiscrimination statement indicating that the public body does not discriminate against faith-based organizations.

E. A faith-based organization contracting with a public body (i) shall not discriminate against any recipient of goods, services, or disbursements made pursuant to a contract authorized by this section on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and (ii) shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. Nothing in clause (ii) shall be construed to supersede or otherwise override any other applicable state law.

F. Consistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, funds provided for expenditure pursuant to contracts with public bodies shall not be spent for religious worship, instruction, or proselytizing; however, this prohibition shall not apply to expenditures pursuant to contracts, if any, for the services of chaplains.

G. Nothing in this section shall be construed as barring or prohibiting a faith-based organization from any opportunity to make a bid or proposal or contract on the grounds that the faith-based organization has exercised the right, as expressed in 42 U.S.C. (§ 2000 e-1 et seq.), to employ persons of a particular religion.

H. If an individual, who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization, objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

The public body shall provide to each individual who applies for or receives goods, services, or disbursements provided pursuant to a contract between a public body and a faith-based organization a notice in bold face type that states: "Neither the public body's selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been

violated, please discuss the complaint with your provider or notify the appropriate person as indicated in this form."

2001, c. 774, § 11-35.1; 2005, c. 928.

§ 2.2-4344. Exemptions from competition for certain transactions

A. Any public body may enter into contracts without competition for:

1. The purchase of goods or services that are produced or performed by:

a. Persons, or in schools or workshops, under the supervision of the Virginia Department for the Blind and Vision Impaired; or

b. Employment services organizations that offer transitional or supported employment services serving individuals with disabilities.

2. The purchase of legal services, provided that the pertinent provisions of Chapter 5 (§ 2.2-500 et seq.) remain applicable, or expert witnesses or other services associated with litigation or regulatory proceedings.

B. An industrial development authority or regional industrial facility authority may enter into contracts without competition with respect to any item of cost of "authority facilities" or "facilities" as defined in § 15.2-4902 or "facility" as defined in § 15.2-6400.

C. A community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, with members selected pursuant to such article, may enter into contracts without competition with respect to the exercise of any of its powers permitted by § 15.2-5158. However, this exception shall not apply in cases where any public funds other than special assessments and incremental real property taxes levied pursuant to § 15.2-5158 are used as payment for such contract.

D. The State Inspector General may enter into contracts without competition to obtain the services of licensed health care professionals or other experts to assist in carrying out the duties of the Office of the State Inspector General.

1982, c. 647, § 11-45; 1984, c. 764; 1987, cc. 194, 248; 1989, c. 235; 1990, c. 395; 1991, c. 175; 1993, cc. 110, 505, 638, 971; 1996, cc. 145, 897, 902, 950, 1038; 1998, cc. 222, 619, 666, 697, 791; 1999, cc. 160, 194, 1021, 1024; 2000, cc. 242, 696, 927; 2001, c. 844; 2008, c. 52; 2009, cc. 813, 840; 2011, cc. 798, 871; 2012, c. 632.

§ 2.2-4345. Exemptions from competitive sealed bidding and competitive negotiation for certain transactions; limitations

A. The following public bodies may enter into contracts without competitive sealed bidding or competitive negotiation:

1. The Director of the Department of Medical Assistance Services for special services provided for eligible recipients pursuant to subsection H of § 32.1-325, provided that the Director has made a

determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public, or would constitute an imminent threat to the health or welfare of such recipients. The writing shall document the basis for this determination.

2. The State Health Commissioner for the compilation, storage, analysis, evaluation, and publication of certain data submitted by health care providers and for the development of a methodology to measure the efficiency and productivity of health care providers pursuant to Chapter 7.2 (§ 32.1-276.2 et seq.) of Title 32.1, if the Commissioner has made a determination in advance, after reasonable notice to the public and set forth in writing, that competitive sealed bidding or competitive negotiation for such services is not fiscally advantageous to the public. The writing shall document the basis for this determination. Such agreements and contracts shall be based on competitive principles.

3. The Virginia Code Commission when procuring the services of a publisher, pursuant to §§ 30-146 and 30-148, to publish the Code of Virginia or the Virginia Administrative Code.

4. (Effective until July 1, 2018) The Department of Alcoholic Beverage Control for the purchase of alcoholic beverages.

4. (Effective July 1, 2018) The Virginia Alcoholic Beverage Control Authority for the purchase of alcoholic beverages.

5. The Department for Aging and Rehabilitative Services, for the administration of elder rights programs, with (i) nonprofit Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code with statewide experience in Virginia in conducting a state long-term care ombudsman program or (ii) designated area agencies on aging.

6. The Department of Health for (a) child restraint devices, pursuant to § 46.2-1097; (b) health care services with Virginia corporations granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services in a community (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge; or (c) contracts with laboratories providing cytology and related services if competitive sealed bidding and competitive negotiations are not fiscally advantageous to the public to provide quality control as prescribed in writing by the Commissioner of Health.

7. Virginia Correctional Enterprises, when procuring materials, supplies, or services for use in and support of its production facilities, provided the procurement is accomplished using procedures that ensure as efficient use of funds as practicable and, at a minimum, includes obtaining telephone quotations. Such procedures shall require documentation of the basis for awarding contracts under this section.

8. The Virginia Baseball Stadium Authority for the operation of any facilities developed under the provisions of Chapter 58 (§ 15.2-5800 et seq.) of Title 15.2, including contracts or agreements with respect to the sale of food, beverages and souvenirs at such facilities.

9. With the consent of the Governor, the Jamestown-Yorktown Foundation for the promotion of tourism through marketing with private entities provided a demonstrable cost savings, as reviewed by the Secretary of Education, can be realized by the Foundation and such agreements or contracts are based on competitive principles.

10. The Chesapeake Hospital Authority in the exercise of any power conferred under Chapter 271, as amended, of the Acts of Assembly of 1966, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

11. Richmond Eye and Ear Hospital Authority, any authorities created under Chapter 53 (§ 15.2-5300 et seq.) of Title 15.2 and any hospital or health center commission created under Chapter 52 (§ 15.2-5200 et seq.) of Title 15.2 in the exercise of any power conferred under their respective authorizing legislation, provided that these entities shall not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

12. The Patrick Hospital Authority sealed in the exercise of any power conferred under the Acts of Assembly of 2000, provided that it does not discriminate against any person on the basis of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, or disability in the procurement of goods and services.

13. Public bodies for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles and provided that the public body has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

14. Public bodies administering public assistance and social services programs as defined in § 63.2-100, community services boards as defined in § 37.2-100, or any public body purchasing services under the Children's Services Act (§ 2.2-5200 et seq.) or the Virginia Juvenile Community Crime Control Act (§ 16.1-309.2 et seq.) for goods or personal services for direct use by the recipients of such programs if the procurement is made for an individual recipient. Contracts for the bulk procurement of goods or services for the use of recipients shall not be exempted from the requirements of § 2.2-4303.

15. The Eastern Virginia Medical School in the exercise of any power conferred pursuant to Chapter 471, as amended, of the Acts of Assembly of 1964.

B. No contract for the construction of any building or for an addition to or improvement of an existing building by any local government or subdivision of local government for which state funds of not more than $50,000 in the aggregate or for the sum of all phases of a contract or project either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under of subsection D of § 2.2-4303. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to this chapter.

1982, c. 647, § 11-45; 1984, c. 764; 1987, cc. 194, 248; 1989, c. 235; 1990, c. 395; 1991, c. 175; 1993, cc. 110, 505, 638, 971; 1996, cc. 145, 897, 902, 950, 1038; 1998, cc. 222, 619, 666, 697, 791; 1999, cc. 160, 194, 1021, 1024; 2000, cc. 242, 696, 927; 2001, c. 844; 2002, cc. 87, 478, 747; 2006, c. 658; 2011, c. 538; 2012, cc. 803, 835; 2015, cc. 38, 366, 730.

§ 2.2-4346. Other exemptions for certain transactions

The following public bodies may enter into contracts as provided in this section.

A. Contracts for certain essential election materials and services are exempted from the requirements of Articles 1 (§ 2.2-4300 et seq.), 2 (§ 2.2-4303 et seq.), and 5 (§ 2.2-4357 et seq.) of this chapter pursuant to § 24.2-602.

B. Any local school board may authorize any of its public schools or its school division to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this chapter; competitive sealed bidding is not necessarily required for such contracts. The Superintendent of Public Instruction may provide assistance to public school systems regarding this chapter and other related laws.

C. The Virginia Racing Commission may designate an entity to administer and promote the Virginia Breeders Fund created pursuant to § 59.1-372 without competitive procurement.

1982, c. 647, §§ 11-41, 11-45; 1984, c. 764; 1985, c. 164; 1986, cc. 332, 559; 1987, cc. 194, 248, 456; 1988, cc. 40, 640; 1989, cc. 235, 296; 1990, c. 395; 1991, cc. 73, 175; 1992, c. 105, § 11-40.3; 1993, cc. 110, 242, 505, 638, 971; 1996, cc. 145, 827, 897, 902, 950, 965, 1019, 1038; 1998, c. 222, 619, 666, 697, 791; 1999, cc. 160, 178, 194, 1021, 1024; 2000, cc. 242, 637, 647, 664, 692, 696, 927; 2001, c. 844.

Article 4 - PROMPT PAYMENT

§ 2.2-4347. Definitions

As used in this article, unless the context requires a different meaning:

"Contractor" means the entity that has a direct contract with any "state agency" as defined herein, or any agency of local government as discussed in § 2.2-4352.

"Debtor" means any individual, business, or group having a delinquent debt or account with any state agency that obligation has not been satisfied or set aside by court order or discharged in bankruptcy.

"Payment date" means either (i) the date on which payment is due under the terms of a contract for provision of goods or services; or (ii) if such date has not been established by contract, (a) thirty days after receipt of a proper invoice by the state agency or its agent or forty-five days after receipt by the local government or its agent responsible under the contract for approval of such invoices for the amount of payment due, or (b) thirty days after receipt of the goods or services by the state agency or forty-five days after receipt by the local government, whichever is later.

"State agency" means any authority, board, department, instrumentality, institution, agency or other unit of state government. The term shall not include any county, city or town or any local or regional governmental authority.

"Subcontractor" means any entity that has a contract to supply labor or materials to the contractor to whom the contract was awarded or to any subcontractor in the performance of the work provided for in such contract.

1984, c. 736, § 11-62.1; 1990, c. 824; 1992, c. 75; 2001, c. 844.

§ 2.2-4348. Exemptions

The provisions of this article shall not apply to the late payment provisions contained in any public utility tariffs prescribed by the State Corporation Commission.

1984, c. 736, § 11-62.9; 2001, c. 844.

§ 2.2-4349. Retainage to remain valid

Notwithstanding the provisions of this article, the provisions of § 2.2-4333 relating to retainage shall remain valid.

1984, c. 736, § 11-62.8; 2001, c. 844.

§ 2.2-4350. Prompt payment of bills by state agencies

A. Every state agency that acquires goods or services, or conducts any other type of contractual business with nongovernmental, privately owned enterprises shall promptly pay for the completely delivered goods or services by the required payment date.

Payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (§ 2.2-4800 et seq.).

B. Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial deliveries or executions to the extent that such contract provides for separate payment for such partial delivery or execution.

1984, c. 736, §§ 11-62.2, 11-62.3; 1992, c. 75; 2001, c. 844.

§ 2.2-4350.1. Prohibition on payment without an appropriation; prohibition on IOUs

A. As used in this section, "IOU" means a document issued by a governmental entity or representative (i) that acknowledges a debt but that does not specify all repayment terms, such as the repayment date, and (ii) when moneys are not available to pay a current debt.

B.1. Notwithstanding any other provision of law, unless the General Assembly has appropriated funds to pay for a good or service or to make payment on a debt, no state department, agency, or other state entity nor any state official, officer, employee, or agent shall (i) attempt to pay for the good or service or attempt to make payment on the debt; (ii) issue any document or paper that guarantees payment, or purports to pay, for the good or service or guarantees payment, or purports to make payment, on the debt; or (iii) in any other way attempt to pay, guarantee payment, or purport to pay for the same.

2. The prohibition on payment under subdivision 1 shall not apply (i) to payments required by federal law or (ii) if funds are lawfully available.

C. In addition, in no case shall any (i) state department, agency, or other state entity or (ii) state official, officer, or employee in performing the duties of his position furnish an IOU in exchange for any good or service, as a means to pay for any good or service, or in lieu of a payment on a debt.

2015, c. 673.

§ 2.2-4351. Defect or impropriety in the invoice or goods and/or services received

In instances where there is a defect or impropriety in an invoice or in the goods or services received, the state agency shall notify the supplier of the defect or impropriety, if the defect or impropriety would prevent payment by the payment date. The notice shall be sent within fifteen days after receipt of the invoice or the goods or services.

1984, c. 736, § 11-62.4; 2001, c. 844.

§ 2.2-4352. Prompt payment of bills by localities

Every agency of local government that acquires goods or services, or conducts any other type of contractual business with a nongovernmental, privately owned enterprise, shall promptly pay for the completed delivered goods or services by the required payment date. The required payment date shall be either: (i) the date on which payment is due under the terms of the contract for the provision of the goods or services; or (ii) if a date is not established by contract, not more than forty-five days after goods or services are received or not more than forty-five days after the invoice is rendered, whichever is later.

Separate payment dates may be specified for contracts under which goods or services are provided in a series of partial executions or deliveries to the extent that the contract provides for separate payment for partial execution or delivery.

Within twenty days after the receipt of the invoice or goods or services, the agency shall notify the supplier of any defect or impropriety that would prevent payment by the payment date.

Unless otherwise provided under the terms of the contract for the provision of goods or services, every agency that fails to pay by the payment date shall pay any finance charges assessed by the supplier that shall not exceed one percent per month.

The provisions of this section shall not apply to the late payment provisions in any public utility tariffs or public utility negotiated contracts.

1985, c. 454, § 11-62.10; 2001, c. 844.

§ 2.2-4353. Date of postmark deemed to be date payment is made

In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this chapter.

1984, c. 736, § 11-62.6; 2001, c. 844.

§ 2.2-4354. Payment clauses to be included in contracts

Any contract awarded by any state agency, or any contract awarded by any agency of local government in accordance with § 2.2-4352, shall include:

1. A payment clause that obligates the contractor to take one of the two following actions within seven days after receipt of amounts paid to the contractor by the state agency or local government for work performed by the subcontractor under that contract:

a. Pay the subcontractor for the proportionate share of the total payment received from the agency attributable to the work performed by the subcontractor under that contract; or

b. Notify the agency and subcontractor, in writing, of his intention to withhold all or a part of the subcontractor's payment with the reason for nonpayment.

2. A payment clause that requires (i) individual contractors to provide their social security numbers and (ii) proprietorships, partnerships, and corporations to provide their federal employer identification numbers.

3. An interest clause that obligates the contractor to pay interest to the subcontractor on all amounts owed by the contractor that remain unpaid after seven days following receipt by the contractor of payment from the state agency or agency of local government for work performed by the subcontractor under that contract, except for amounts withheld as allowed in subdivision 1.

4. An interest rate clause stating, "Unless otherwise provided under the terms of this contract, interest shall accrue at the rate of one percent per month."

Any such contract awarded shall further require the contractor to include in each of its subcontracts a provision requiring each subcontractor to include or otherwise be subject to the same payment and interest requirements with respect to each lower-tier subcontractor.

A contractor's obligation to pay an interest charge to a subcontractor pursuant to the payment clause in this section shall not be construed to be an obligation of the state agency or agency of local government. A contract modification shall not be made for the purpose of providing reimbursement for the interest charge. A cost reimbursement claim shall not include any amount for reimbursement for the interest charge.

1990, c. 824, § 11-62.11; 1992, c. 110; 2001, c. 844.

§ 2.2-4355. Interest penalty; exceptions

A. Interest shall accrue, at the rate determined pursuant to subsection B, on all amounts owed by a state agency to a vendor that remain unpaid after seven days following the payment date. However, nothing in this section shall affect any contract providing for a different rate of interest, or for the payment of interest in a different manner.

B. The rate of interest charged a state agency pursuant to subsection A shall be the base rate on corporate loans (prime rate) at large United States money center commercial banks as reported daily in the publication entitled The Wall Street Journal. Whenever a split prime rate is published, the lower of the two rates shall be used. However, in no event shall the rate of interest charged exceed the rate of interest established pursuant to § 58.1-1812.

C. Notwithstanding subsection A, no interest penalty shall be charged when payment is delayed because of disagreement between a state agency and a vendor regarding the quantity, quality or time of delivery of goods or services or the accuracy of any invoice received for the goods or services. The exception from the interest penalty provided by this subsection shall apply only to that portion of a delayed payment that is actually the subject of the disagreement and shall apply only for the duration of the disagreement.

D. This section shall not apply to § 2.2-4333 pertaining to retainage on construction contracts, during the period of time prior to the date the final payment is due. Nothing contained herein shall prevent a contractor from receiving interest on such funds under an approved escrow agreement.

E. Notwithstanding subsection A, no interest penalty shall be paid to any debtor on any payment, or portion thereof, withheld pursuant to the Comptroller's Debt Setoff Program, as authorized by the Virginia Debt Collection Act (§ 2.2-4800 et seq.), commencing with the date the payment is withheld. If, as a result of an error, a payment or portion thereof is withheld, and it is determined that at the time of setoff no debt was owed to the Commonwealth, then interest shall accrue at the rate determined pursuant to subsection B on amounts withheld that remain unpaid after seven days following the payment date.

1984, c. 736, § 11-62.5; 1985, c. 101; 1992, c. 75; 2001, c. 844.

§ 2.2-4356. Comptroller to file annual report

The Comptroller shall file an annual report with the Governor, the Senate Committee on Finance, the House Committees on Finance and Appropriations on November 1 for the preceding fiscal year

including (i) the number and dollar amounts of late payments by departments, institutions and agencies, (ii) the total amount of interest paid and (iii) specific steps being taken to reduce the incidence of late payments.

1984, c. 736, § 11-62.7; 1985, c. 101; 1997, c. 165; 2001, c. 844.

Article 5 - REMEDIES

§ 2.2-4357. Ineligibility

A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

B. If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, applicable state law or regulations, the sole relief shall be restoration of eligibility.

1982, c. 647, § 11-63; 1998, c. 753; 2001, c. 844.

§ 2.2-4358. Appeal of denial of withdrawal of bid

A. A decision denying withdrawal of bid under the provisions of § 2.2-4330 shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 2.2-4330, prior to appealing, shall deliver to the public body a certified check or cash bond in the

amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

1982, c. 647, § 11-64; 1985, c. 164; 1999, c. 1008; 2001, c. 844.

§ 2.2-4359. Determination of nonresponsibility

A. Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids in accordance with element 4 of the process for competitive sealed bidding set forth in § 2.2-4302.1. At the same time, the public body shall determine whether the apparent low bidder is responsible. If the public body so determines, then it may proceed with an award in accordance with element 5 of the process for competitive sealed bidding set forth in § 2.2-4302.1. If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:

1. Prior to the issuance of a written determination of nonresponsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

B. If, upon appeal pursuant to § 2.2-4364 or 2.2-4365, it is determined that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or

(ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question or directed award as provided in subsection A of § 2.2-4364 or both.

If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 2.2-4360.

C. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under the provisions of § 2.2-4360.

D. Nothing contained in this section shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

1982, c. 647, § 11-65; 1997, c. 864; 1998, c. 753; 1999, c. 1008; 2001, c. 844; 2013, c. 583.

§ 2.2-4360. Protest of award or decision to award

A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 2.2-4303. However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transaction that are subject to inspection under § 2.2-4342, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 2.2-4342, or at such later time as provided in this section. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The public body or designated official shall issue a decision in writing within ten days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of receipt of the written decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

B. If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The public body shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided.

Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the public body may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

C. Where a public body, an official designated by that public body, or an appeals board determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 6 (§ 2.2-4367 et seq.) of this chapter, the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder.

1982, c. 647, § 11-66; 1985, c. 164; 1997, c. 864; 2000, c. 641; 2001, c. 844.

§ 2.2-4361. Effect of appeal upon contract

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed.

1982, c. 647, § 11-67; 2001, c. 844.

§ 2.2-4362. Stay of award during protest

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in § 2.2-4360, or the filing of a timely legal action as provided in § 2.2-4364, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

1982, c. 647, § 11-68; 1997, c. 864; 2001, c. 844.

§ 2.2-4363. Contractual disputes

A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

B. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the public body. If the public body has established administrative procedures meeting the standards of § 2.2-4365, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor.

C. If, however, the public body fails to include in its contracts a procedure for consideration of contractual claims, the following procedure shall apply:

1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.

2. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the public body's chief administrative officer or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the public body fails to render a decision within 90 days of submission of the claim. Failure of the public body to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the public body's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.

D. A contractor may not invoke administrative procedures meeting the standards of § 2.2-4365, if available, or institute legal action as provided in § 2.2-4364, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract or, if no time is specified, then within the time provided by subsection C. A failure of the public body to render a final decision within the time provided in subsection C shall be deemed a final decision denying the claim by the public body.

E. The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

1982, c. 647, § 11-69; 2001, cc. 106, 844; 2005, c. 815.

§ 2.2-4364. Legal actions

A. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the

decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § 2.2-4301, is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 2.2-4358 may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in § 2.2-4303, whose protest of an award or decision to award under § 2.2-4360 is denied, may bring an action in the appropriate circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms and conditions of the Invitation to Bid or Request for Proposal.

D. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to this chapter or § 33.2-1103, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 2.2-4365, if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.

G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

1982, c. 647, § 11-70; 1985, c. 164; 1994, c. 918; 1995, c. 527; 1997, c. 864; 1998, cc. 205, 753; 1999, c. 1008; 2001, c. 844.

§ 2.2-4365. Administrative appeals procedure

A. A public body may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.

B. Any party to the administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

1982, c. 647, § 11-71; 1994, cc. 660, 918; 2001, c. 844.

§ 2.2-4366. Alternative dispute resolution

Public bodies may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the Commonwealth, or any department, institution, division, commission, board or bureau thereof, shall be nonbinding and subject to § 2.2-514, as applicable. Alternative dispute resolution procedures entered into by school boards shall be nonbinding.

1995, c. 760, § 11-71.1; 2001, c. 844.

Article 6 - ETHICS IN PUBLIC CONTRACTING

§ 2.2-4367. Purpose

The provisions of this article supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.), the Virginia Governmental Frauds Act (§ 18.2-498.1 et seq.), and Articles 2 (§ 18.2-438 et seq.) and 3 (§ 18.2-446 et seq.) of Chapter 10 of Title 18.2.

The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

1982, c. 647, § 11-72; 1987, Sp. Sess., c. 1; 2001, c. 844.

§ 2.2-4368. Definitions

As used in this article:

"Immediate family" means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

"Official responsibility" means administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

"Procurement transaction" means all functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Public employee" means any person employed by a public body, including elected officials or appointed members of governing bodies.

1982, c. 647, § 11-73; 1987, Sp. Sess., c. 1; 2001, c. 844.

§ 2.2-4369. Proscribed participation by public employees in procurement transactions

Except as may be specifically allowed by subdivisions A 2, 3 and 4 of § 2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;

2. The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent;

3. The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

4. The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

1982, c. 647, § 11-74; 1985, c. 565; 1987, Sp. Sess., c. 1; 1997, c. 83; 2001, c. 844; 2003, c. 694.

§ 2.2-4370. Disclosure of subsequent employment

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one year from the cessation of employment by the public body unless the employee or former employee provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.

1982, c. 647, § 11-76; 2001, c. 844.

§ 2.2-4371. Prohibition on solicitation or acceptance of gifts; gifts by bidders, offerors, contractor or subcontractors prohibited

A. No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The public body may recover the value of anything conveyed in violation of this subsection.

B. No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

1982, c. 647, §§ 11-75, 11-77; 2001, c. 844.

§ 2.2-4372. Kickbacks

A. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.

B. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

C. No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

D. If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

1982, c. 647, § 11-78; 2001, c. 844.

§ 2.2-4373. Participation in bid preparation; limitation on submitting bid for same procurement

No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement that is not available to the public. However, a public body may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of the person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body.

1997, c. 68, § 11-78.1; 2001, c. 844.

§ 2.2-4374. Purchase of building materials, etc., from architect or engineer prohibited

A. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in § 2.2-3101.

B. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in § 2.2-3101.

C. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

1982, c. 647, § 11-79; 1993, c. 202; 1994, c. 882; 1996, c. 827; 2001, c. 844.

§ 2.2-4375. Certification of compliance required; penalty for false statements

A. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.

B. Any public employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided in § 2.2-4377.

1992, c. 761, § 11-79.1; 2001, c. 844.

§ 2.2-4376. Misrepresentations prohibited

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

1992, c. 761, § 11-79.2; 2001, c. 844.

§ 2.2-4376.1. Contributions and gifts; prohibition during procurement process

A. No bidder or offeror who has submitted a bid or proposal to an executive branch agency that is directly responsible to the Governor for the award of a public contract pursuant to this chapter, and no individual who is an officer or director of such a bidder or offeror, shall knowingly provide a contribution, gift, or other item with a value greater than $50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the

Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, during the period between the submission of the bid and the award of the public contract under this chapter. The provisions of this section shall apply only for public contracts where the stated or expected value of the contract is $5 million or more. The provisions of this section shall not apply to contracts awarded as the result of competitive sealed bidding.

B. Any person who knowingly violates this section shall be subject to a civil penalty of $500 or up to two times the amount of the contribution or gift, whichever is greater. The attorney for the Commonwealth shall initiate civil proceedings to enforce the civil penalties. Any civil penalties collected shall be payable to the State Treasurer for deposit to the general fund.

2010, c. 732; 2011, c. 624.

§ 2.2-4377. Penalty for violation

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

1982, c. 647, § 11-80; 2001, c. 844.

Chapter 44 - VIRGINIA SECURITY FOR PUBLIC DEPOSITS ACT

§ 2.2-4400. Short title; declaration of intent; applicability

A. This chapter may be cited as the "Virginia Security for Public Deposits Act."

B. The General Assembly intends by this chapter to establish a single body of law applicable to the pledge of collateral for public deposits in financial institutions so that the procedure for securing public deposits may be uniform throughout the Commonwealth.

C. All public deposits in qualified public depositories that are required to be secured by other provisions of law or by a public depositor shall be secured pursuant to this chapter. Public depositors are required to secure their deposits pursuant to several applicable provisions of law, including but not limited to §§ 2.2-1813, 2.2-1815, 8.01-582, 8.01-600, 15.2-1512.1, 15.2-1615, 15.2-2625, 15.2-6611, 15.2-6637, 58.1-3149, 58.1-3150, 58.1-3154, and 58.1-3158.

D. This chapter, however, shall not apply to deposits made by the State Treasurer in out-of-state financial institutions related to master custody and tri-party repurchase agreements, provided (i) such deposits do not exceed ten percent of average monthly investment balances and (ii) the out-of-state financial institutions used for this purpose have a short-term deposit rating of not less than A-1 by Standard & Poor's Rating Service or P-1 by Moody's Investors Service, Inc., respectively.

1973, c. 172, §§ 2.1-359, 2.1-361; 1984, c. 135; 2000, cc. 335, 352; 2001, c. 844; 2010, cc. 640, 674.

§ 2.2-4401. Definitions

As used in this chapter, unless the context requires a different meaning:

"Dedicated method" or "opt-out method" means the securing of public deposits without accepting the contingent liability for the losses of public deposits of other qualified public depositories, pursuant to § 2.2-4404 and regulations and guidelines promulgated by the Treasury Board.

"Defaulting depository" means any qualified public depository determined to be in default or insolvent.

"Default or insolvency" includes, but shall not be limited to, the failure or refusal of any qualified public depository to return any public deposit upon demand or at maturity and the issuance of an order of supervisory authority restraining such depository from making payments of deposit liabilities or the appointment of a receiver for such depository.

"Eligible collateral" means securities or instruments authorized as legal investments under the laws of the Commonwealth for public sinking funds or other public funds as well as Federal Home Loan Bank letters of credit issued in accordance with guidelines promulgated by the Treasury Board.

"Located in Virginia" means having a main office or branch office in the Commonwealth where deposits are accepted, checks are paid, and money is lent.

"Pooled method" means securing public deposits by accepting the contingent liability for the losses of public deposits of other qualified public depositories choosing this method, pursuant to § 2.2-4403 and regulations and guidelines promulgated by the Treasury Board.

"Public deposit" means moneys held by a public depositor who is charged with the duty to receive or administer such moneys and is acting in an official capacity, such moneys being deposited in any of the following types of accounts: nonnegotiable time deposits, demand deposits, savings deposits, or any other transaction accounts.

"Public depositor" means the Commonwealth or any county, city, town or other political subdivision thereof, including any commission, institution, committee, board, or officer of the foregoing and any state court.

"Qualified escrow agent" means the State Treasurer or any bank or trust company approved by the Treasury Board to hold collateral pledged to secure public deposits.

"Qualified public depository" means any national banking association, federal savings and loan association or federal savings bank located in Virginia, any bank, trust company or savings institution organized under Virginia law, or any state bank or savings institution organized under the laws of another state located in Virginia authorized by the Treasury Board to hold public deposits according to this chapter.

"Required collateral" of a qualified public depository means the amount of eligible collateral required to secure public deposits set by regulations or an action of the Treasury Board.

"Treasury Board" means the Treasury Board of the Commonwealth created by § 2.2-2415.

1973, c. 172, § 2.1-360; 1984, c. 135; 1987, c. 718; 1996, c. 77; 1998, cc. 20, 21; 2001, c. 844; 2008, c. 7; 2010, cc. 640, 674.

§ 2.2-4402. Collateral for public deposits

Qualified public depositories shall elect to secure deposits by either the pooled method or the dedicated method. Every qualified public depository shall deposit with a qualified escrow agent eligible collateral equal to or in excess of the required collateral. Eligible collateral shall be valued as determined by the Treasury Board. Substitutions and withdrawals of eligible collateral may be made as determined by the Treasury Board.

Notwithstanding any other provisions of law, no qualified public depository shall be required to give bond or pledge securities or instruments in the manner herein provided for the purpose of securing deposits received or held in the trust department of the depository and that are secured as required by § 6.2-1005 of the Code of Virginia or that are secured pursuant to Title 12, § 92a of the United States Code by securities of the classes prescribed by § 6.2-1005 of the Code of Virginia .

No qualified public depository shall accept or retain any public deposit that is required to be secured unless it has deposited eligible collateral equal to its required collateral with a qualified escrow agent pursuant to this chapter.

1973, c. 172, § 2.1-362; 2001, c. 844; 2010, cc. 640, 674.

§ 2.2-4403. Procedure for payment of losses by pooled method

When the Treasury Board determines that a qualified public depository securing public deposits in accordance with this section is a defaulting depository, it shall as promptly as practicable take steps to reimburse public depositors for uninsured public deposits using the following procedures:

1. The Treasury Board shall ascertain the amount of uninsured public deposits held by the defaulting depository, either with the cooperation of the Commissioner of Financial Institutions, the receiver appointed for such depository, or by any other means available.

2. The amount of such uninsured public deposits ascertained as provided in subdivision 1, plus any costs associated with liquidation, shall be assessed by the Treasury Board first against the defaulting depository to the extent of the full realizable market value of the collateral pledged to secure its public deposits.

3. In the event the realized value of the pledged collateral in subdivision 2 is insufficient to satisfy the liability of the defaulting depository to its public depositors and the Treasury Board, the Treasury Board shall assess the remaining liability against all other qualified public depositories securing public deposits according to the following ratio: total average public deposit balance for each qualified public depository held during the immediately preceding twelve months divided by the

total average public deposit balance for the same period held by all qualified public depositories under this section other than the defaulting depository.

4. Assessments made by the Treasury Board in accordance with subdivision 3 shall be payable by the close of business on the second business day following demand. Upon the failure of any qualified public depository to pay such assessment when due, the State Treasurer shall promptly take possession of the eligible collateral deposited with the non-paying depository's escrow agent and liquidate the same to the extent necessary to pay the original assessment plus any additional costs necessary to liquidate the collateral.

5. Upon receipt of such assessments and the net proceeds of the eligible collateral liquidated from the State Treasurer, the Treasury Board shall reimburse the public depositors to the extent of the defaulting depository's liability to them, net of any applicable deposit insurance.

1973, c. 172, § 2.1-363; 1978, c. 14; 1984, c. 135; 2001, c. 844; 2009, c. 64; 2010, cc. 640, 674.

§ 2.2-4404. Procedure for payment of losses by dedicated method

When the Treasury Board determines that a qualified public depository securing public deposits in accordance with this section is a defaulting depository, it shall as promptly as practicable take steps to reimburse public depositors of all uninsured public deposits using the following procedures:

1. The Treasury Board shall ascertain the amount of uninsured public deposits held by the defaulting depository with the cooperation of the Commissioner of Financial Institutions, the receiver appointed for such depository or by any other means available.

2. The amount of such uninsured public deposits ascertained as provided in subdivision 1, plus any costs associated with liquidation of the eligible collateral of the defaulting depository, shall be assessed by the Treasury Board against the defaulting depository. The State Treasurer shall promptly take possession of the eligible collateral deposited by such depository with the depository's escrow agent, as is necessary to satisfy the assessment of the Treasury Board and shall liquidate the same and turn over the net proceeds to the Treasury Board.

3. Upon receipt from the State Treasurer of the eligible collateral liquidated, the Treasury Board shall reimburse the public depositors from the proceeds of the collateral up to the extent of the depository's deposit liability to them, net of any applicable deposit insurance.

1984, c. 135, § 2.1-363.1; 2001, c. 844; 2009, c. 64; 2010, cc. 640, 674.

§ 2.2-4405. Powers of Treasury Board relating to the administration of this chapter

The Treasury Board shall have power to:

1. Make and enforce regulations and guidelines necessary and proper to the full and complete performance of its functions under this chapter;

2. Prescribe and enforce regulations and guidelines fixing terms and conditions consistent with this chapter under which public deposits must be secured;

3. Require additional collateral, in excess of the required collateral of any or all qualified public depositories as it may determine prudent under the circumstances;

4. Determine what securities or instruments shall be acceptable as eligible collateral, and fix the percentage of face value or market value of such securities or instruments that can be used to secure public deposits;

5. Establish guidelines to permit banks to withdraw from the procedures for the payment of losses under § 2.2-4403 and instead be governed by the procedures for the payment of losses under § 2.2-4404, consistent with the primary purpose of protecting public deposits;

6. Require any qualified public depository to provide information concerning its public deposits as requested by the Treasury Board; and

7. Determine when a default or insolvency has occurred and to take such action as it may deem advisable for the protection, collection, compromise or settlement of any claim arising in case of default or insolvency.

1973, c. 172, § 2.1-364; 2001, c. 844; 2009, c. 64; 2010, cc. 640, 674.

§ 2.2-4406. Subrogation of Treasury Board to depositor's rights; payment of sums received from distribution of assets

Upon payment in full to any public depositor on any claim presented pursuant to § 2.2-4403 or 2.2-4404, the Treasury Board shall be subrogated to all of such depositor's rights, title and interest against the depository in default or insolvent and shall share in any distribution of such defaulting or insolvent depository's assets ratably with other depositors. Any sums received from any such distribution shall be paid to the other qualified public depositories against which assessments were made, in proportion to such assessments, net of any proper payment or expense of the Treasury Board in enforcing any such claim.

1973, c. 172, § 2.1-365; 2001, c. 844; 2010, cc. 640, 674.

§ 2.2-4407. Mandatory deposit of public funds in qualified public depositories

Public deposits required to be secured pursuant to this chapter shall be deposited in a qualified public depository.

1973, c. 172, § 2.1-366; 2001, c. 844; 2010, cc. 640, 674.

§ 2.2-4408. Authority to make public deposits

A. All public depositors are hereby authorized to make public deposits under their control in qualified public depositories, securing such public deposits pursuant to this chapter.

B. Local officials handling public deposits in the Commonwealth may not require from a qualified public depository any pledge of collateral for their deposits in excess of the requirements of this chapter.

1973, c. 172, § 2.1-367; 1980, c. 538, § 2.1-234.5; 1998, cc. 20, 21; 2001, c. 844; 2010, cc. 640, 674.

§ 2.2-4409. Authority to secure public deposits; acceptance of liabilities and duties by public depositories

All qualified public depositories are hereby authorized to secure public deposits in accordance with this chapter and shall be deemed to have accepted the liabilities and duties imposed upon it pursuant to this chapter.

1973, c. 172, § 2.1-368; 2001, c. 844; 2010, cc. 640, 674.

§ 2.2-4410. Liability of public depositors

When deposits are made in accordance with this chapter no official of a public depositor shall be personally liable for any loss resulting from the default or insolvency of any qualified public depository in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his agents.

1973, c. 172, § 2.1-370; 2001, c. 844; 2010, cc. 640, 674.

§ 2.2-4411. Reports of qualified public depositories

By the tenth day after the end of each calendar reporting month or when requested by the Treasury Board each qualified public depository shall submit to the Treasury Board an electronic report of such data required by the Treasury Board to demonstrate that the current market value of its pledged collateral was equal to or greater than the amount of required collateral for the previous month, certified as to its accuracy by an authorized official of the qualified public depository.

Upon request by a public depositor, a qualified public depository shall provide a schedule detailing the public deposit accounts reported to the Treasury Board for that depositor, as well as the amount of total public deposits held by that depository at the close of the applicable month and the total market value of the collateral securing such public deposits.

1973, c. 172, § 2.1-369; 1979, c. 154; 2001, c. 844; 2010, cc. 640, 674.

Chapter 45 - INVESTMENT OF PUBLIC FUNDS ACT

§ 2.2-4500. Legal investments for public sinking funds

The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any sinking funds belonging to them or within their control in the following securities:

1. Bonds, notes and other evidences of indebtedness of the Commonwealth, and securities unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.

2. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof. The evidences of indebtedness enumerated by this subdivision may be held directly, or in the form

of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. Bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body of the Commonwealth upon which there is no default; provided, that such bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body are either direct legal obligations of, or those unconditionally guaranteed as to the payment of principal and interest by the county, city, town, district, authority or other public body in question; and revenue bonds issued by agencies or authorities of the Commonwealth or its political subdivisions upon which there is no default.

4. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, bonds and other obligations issued, guaranteed or assumed by the Asian Development Bank and bonds and other obligations issued, guaranteed or assumed by the African Development Bank.

5. Savings accounts or time deposits in any bank or savings institution within the Commonwealth provided the bank or savings institution is approved for the deposit of other funds of the Commonwealth or other political subdivision of the Commonwealth.

1956, c. 184, § 2-297; 1958, c. 102; 1966, c. 677, § 2.1-327; 1970, c. 75; 1974, c. 288; 1986, c. 270; 1988, cc. 526, 834; 1996, cc. 77, 508; 2001, c. 844.

§ 2.2-4501. Legal investments for other public funds

A. The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in the following:

1. Stocks, bonds, notes, and other evidences of indebtedness of the Commonwealth and those unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.

2. Bonds, notes and other obligations of the United States, and securities unconditionally guaranteed as to the payment of principal and interest by the United States, or any agency thereof. The evidences of indebtedness enumerated by this subdivision may be held directly, or in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness, or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. Stocks, bonds, notes and other evidences of indebtedness of any state of the United States upon which there is no default and upon which there has been no default for more than 90 days, provided that within the 20 fiscal years next preceding the making of such investment, such state has not been in default for more than 90 days in the payment of any part of principal or interest of any debt authorized by the legislature of such state to be contracted.

4. Stocks, bonds, notes and other evidences of indebtedness of any county, city, town, district, authority or other public body in the Commonwealth upon which there is no default, provided that if the principal and interest be payable from revenues or tolls and the project has not been completed, or if completed, has not established an operating record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, the standards of judgment and care required in Article 9 (§ 64.2-780 et seq.) of Chapter 7 of Title 64.2, without reference to this section, shall apply.

In any case in which an authority, having an established record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, issues additional evidences of indebtedness for the purposes of acquiring or constructing additional facilities of the same general character that it is then operating, such additional evidences of indebtedness shall be governed by the provisions of this section without limitation.

5. Legally authorized stocks, bonds, notes and other evidences of indebtedness of any city, county, town, or district situated in any one of the states of the United States upon which there is no default and upon which there has been no default for more than 90 days, provided that (i) within the 20 fiscal years next preceding the making of such investment, such city, county, town, or district has not been in default for more than 90 days in the payment of any part of principal or interest of any stock, bond, note or other evidence of indebtedness issued by it; (ii) such city, county, town, or district shall have been in continuous existence for at least 20 years; (iii) such city, county, town, or district has a population, as shown by the federal census next preceding the making of such investment, of not less than 25,000 inhabitants; (iv) the stocks, bonds, notes or other evidences of indebtedness in which such investment is made are the direct legal obligations of the city, county, town, or district issuing the same; (v) the city, county, town, or district has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount; and (vi) the net indebtedness of such city, county, town, or district (including the issue in which such investment is made), after deducting the amount of its bonds issued for self-sustaining public utilities, does not exceed 10 percent of the value of the taxable property in such city, county, town, or district, to be ascertained by the valuation of such property therein for the assessment of taxes next preceding the making of such investment.

6. Bonds and other obligations issued, guaranteed or assumed by the International Bank for Reconstruction and Development, by the Asian Development Bank or by the African Development Bank.

B. This section shall not apply to funds authorized by law to be invested by the Virginia Retirement System or to deferred compensation plan funds to be invested pursuant to § 51.1-601 or to funds contributed by a locality to a pension program for the benefit of any volunteer fire department or volunteer emergency medical services agency established pursuant to § 15.2-955.

C. Investments made prior to July 1, 1991, pursuant to § 51.1-601 are ratified and deemed valid to the extent that such investments were made in conformity with the standards set forth in Chapter 6 (§ 51.1-600 et seq.) of Title 51.1.

1956, c. 184, § 2-298; 1966, c. 677, § 2.1-328; 1980, c. 596; 1988, c. 834; 1991, c. 379; 1992, c. 810; 1996, c. 508; 1999, c. 772; 2001, c. 844; 2007, c. 67; 2008, c. 295; 2015, cc. 502, 503.

§ 2.2-4502. Investment of funds of Commonwealth, political subdivisions, and public bodies in "prime quality" commercial paper

A. The Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control other than sinking funds in "prime quality" commercial paper, with a maturity of 270 days or less, of issuing corporations organized under the laws of the United States, or of any state thereof including paper issued by banks and bank holding companies. "Prime quality" shall be as rated by at least two of the following: Moody's Investors Service, Inc., within its NCO/Moody's rating of prime 1, by Standard & Poor's, Inc., within its rating of A-1, by Fitch Investor's Services, Inc., within its rating of F-1, by Duff and Phelps, Inc., within its rating of D-1, or by their corporate successors, provided that at the time of any such investment:

1. The issuing corporation, or its guarantor, has a net worth of at least fifty million dollars; and

2. The net income of the issuing corporation, or its guarantor, has averaged three million dollars per year for the previous five years; and

3. All existing senior bonded indebtedness of the issuer, or its guarantor, is rated "A" or better or the equivalent rating by at least two of the following: Moody's Investors Service, Inc., Standard & Poor's, Inc., Fitch Investor's Services, Inc., or Duff and Phelps, Inc.

Not more than thirty-five percent of the total funds available for investment may be invested in commercial paper, and not more than five percent of the total funds available for investment may be invested in commercial paper of any one issuing corporation.

B. Notwithstanding subsection A, the Commonwealth, municipal corporations, other political subdivisions and public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, except for sinking funds, in commercial paper other than "prime quality" commercial paper as defined in this section provided that:

1. Prior written approval is obtained from the governing board, committee or other entity that determines investment policy. The Treasury Board shall be the governing body for the Commonwealth; and

2. A written internal credit review justifying the creditworthiness of the issuing corporation is prepared in advance and made part of the purchase file.

1973, c. 232, § 2.1-328.1; 1974, c. 295; 1976, c. 665; 1986, c. 170; 1987, c. 73; 1988, c. 834; 1992, c. 769; 2001, c. 844.

§ 2.2-4503. Investments by Fairfax County finance director [Not set out]

Not set out. (2001, c. 844.)

§ 2.2-4504. Investment of funds by the Commonwealth and political subdivisions in bankers' acceptances

Notwithstanding any provisions of law to the contrary, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control other than sinking funds in bankers' acceptances.

1981, c. 18, § 2.1-328.3; 1988, c. 834; 2001, c. 844.

§ 2.2-4505. Investment in certificates representing ownership of treasury bond principal at maturity or its coupons for accrued periods

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, in certificates representing ownership of either treasury bond principal at maturity or its coupons for accrued periods. The underlying United States Treasury bonds or coupons shall be held by a third-party independent of the seller of such certificates.

1983, c. 117, § 2.1-328.5; 1985, c. 352; 1988, c. 834; 2001, c. 844.

§ 2.2-4506. Securities lending

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, political subdivisions and all public bodies of the Commonwealth may engage in securities lending from the portfolio of investments of which they have custody and control, other than sinking funds. The Treasury Board shall develop guidelines with which such securities lending shall fully comply. Such guidelines shall ensure that the state treasury is at all times fully collateralized by the borrowing institution.

1983, c. 268, § 2.1-328.6; 2001, c. 844.

§ 2.2-4507. Investment of funds in overnight, term and open repurchase agreements

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth, may invest any and all moneys belonging to them or within their control in overnight, term and open repurchase agreements that are collateralized with securities that are approved for direct investment.

1985, c. 352, § 2.1-328.8; 1988, c. 834; 2001, c. 844.

§ 2.2-4508. Investment of certain public moneys in certain mutual funds

Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds that are governed by the provisions of § 2.2-4500, in one or more open-end investment funds, provided that the funds are registered under the Securities Act (§ 13.1-501 et seq.) of the Commonwealth or the Federal Investment Co. Act of 1940, and that the investments by such funds are restricted to investments otherwise permitted by law for political subdivisions as set forth in this chapter, or investments in other such funds whose portfolios are so restricted.

1986, c. 170, § 2.1-328.9; 1988, c. 834; 1996, c. 508; 2001, c. 844.

§ 2.2-4509. Investment of funds in negotiable certificates of deposit and negotiable bank deposit notes

Notwithstanding any provision of law to the contrary, the Commonwealth and all public officers, municipal corporations, and other political subdivisions and all other public bodies of the Commonwealth may invest any or all of the moneys belonging to them or within their control, other than sinking funds, in negotiable certificates of deposit and negotiable bank deposit notes of domestic banks and domestic offices of foreign banks with a rating of at least A-1 by Standard & Poor's and P-1 by Moody's Investor Service, Inc., for maturities of one year or less, and a rating of at least AA by Standard & Poor's and Aa by Moody's Investor Service, Inc., for maturities over one year and not exceeding five years.

1998, cc. 20, 21, § 2.1-328.15; 2001, c. 844.

§ 2.2-4510. Investment of funds in corporate notes

A. Notwithstanding any provision of law to the contrary, the Commonwealth, all public officers, municipal corporations, other political subdivisions and all other public bodies of the Commonwealth may invest any and all moneys belonging to them or within their control, other than sinking funds, in high quality corporate notes with a rating of at least Aa by Moody's Investors Service, Inc., and a rating of at least AA by Standard and Poors, Inc., and a maturity of no more than five years.

B. Notwithstanding any provision of law to the contrary, any qualified public entity of the Commonwealth may invest any and all moneys belonging to it or within its control, other than sinking funds, in high quality corporate notes with a rating of at least A by two rating agencies, one of which shall be either Moody's Investors Service, Inc., or Standard and Poors, Inc.

As used in this section, "qualified public entity" means any state agency or institution of the Commonwealth, having an internal or external public funds manager with professional investment management capabilities.

C. Notwithstanding any provision of law to the contrary, the Department of the Treasury may invest any and all moneys belonging to it or within its control, other than sinking funds, in high quality corporate notes with a rating of at least BBB or Baa2 by two rating agencies, one of which shall be Moody's Investors Service, Inc., or Standard and Poors, Inc. With regard to investment securities rated below A, the Commonwealth Treasury Board shall establish strict investment guidelines concerning the investment in such securities and monitor the performance of the securities for compliance with the investment guidelines.

1987, c. 187, § 2.1-328.10; 1988, c. 834; 1994, c. 145; 2001, c. 844; 2002, cc. 18, 438; 2005, c. 30.

§ 2.2-4511. Investment of funds in asset-backed securities

Notwithstanding any provision of law to the contrary, any qualified public entity of the Commonwealth may invest any and all moneys belonging to it or within its control, other than sinking funds, in asset-backed securities with a duration of no more than five years and a rating of no less than AAA by two rating agencies, one of which must be either Moody's Investors Service, Inc., or Standard and Poors, Inc.

As used in this section, "qualified public entity" means any state agency, institution of the Commonwealth or statewide authority created under the laws of the Commonwealth having an internal or external public funds manager with professional investment management capabilities.

1994, c. 145, § 2.1-328.13; 1997, c. 29; 2001, c. 844.

§ 2.2-4512. Investment of funds by State Treasurer in obligations of foreign sovereign governments

Notwithstanding any provision of law to the contrary, the State Treasurer may invest unexpended or excess moneys in any fund or account over which he has custody and control, other than sinking funds, in fully hedged debt obligations of sovereign governments and companies that are fully guaranteed by such sovereign governments, with a rating of at least AAA by Moody's Investors Service, Inc., and a rating of at least AAA by Standard and Poors, Inc., and a maturity of no more than five years.

Not more than ten percent of the total funds of the Commonwealth available for investment may be invested in the manner described in this section.

1988, c. 461, § 2.1-328.11; 2001, c. 844.

§ 2.2-4513. Investments by transportation commissions

Transportation commissions that provide rail service may invest in, if required as a condition to obtaining insurance, participate in, or purchase insurance provided by, foreign insurance companies that insure railroad operations.

1988, c. 834, § 2.1-328.12; 2001, c. 844.

§ 2.2-4514. Commonwealth and its political subdivisions as trustee of public funds; standard of care in investing such funds

Public funds held by the Commonwealth, public officers, municipal corporations, political subdivisions, and any other public body of the Commonwealth shall be held in trust for the citizens of the Commonwealth. Any investment of such funds pursuant to the provisions of this chapter shall be made solely in the interest of the citizens of the Commonwealth and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

1996, c. 437, § 2.1-328.14; 2001, c. 844.

§ 2.2-4515. Collateral and safekeeping arrangements

Securities purchased pursuant to the provisions of this chapter shall be held by the public official, municipal corporation or other political subdivision or public body or its custodial agent who may not otherwise be a counterparty to the investment transaction. Securities held on the books of the custodial agent by a custodial agent shall be held in the name of the municipal corporation, political subdivision or other public body subject to the public body's order of withdrawal. The responsibilities of the public official, municipal corporation, political subdivision or other public body shall be evidenced by a written agreement that shall provide for delivery of the securities by the custodial agent in the event of default by a counterparty to the investment transaction.

As used in this section, "counterparty" means the issuer or seller of a security, an agent purchasing a security on behalf of a public official, municipal corporation, political subdivision or other public body or the party responsible for repurchasing securities underlying a repurchase agreement.

The provisions of this section shall not apply to (i) investments with a maturity of less than 31 calendar days or (ii) the State Treasurer, who shall comply with safekeeping guidelines issued by the Treasury Board or to endowment funds invested in accordance with the provisions of the Uniform Prudent Management of Institutional Funds Act, Chapter 11 (§ 64.2-1100 et seq.) of Title 64.2.

1988, c. 834, § 2.1-329.01; 2001, c. 844; 2008, c. 184.

§ 2.2-4516. Liability of treasurers or public depositors

When investments are made in accordance with this chapter, no treasurer or public depositor shall be liable for any loss therefrom in the absence of negligence, malfeasance, misfeasance, or nonfeasance on his part or on the part of his assistants or employees.

1979, c. 135, § 2.1-329.1; 2001, c. 844.

§ 2.2-4517. Contracts on interest rates, currency, cash flow or on other basis

A. Any state entity may enter into any contract or other arrangement that is determined to be necessary or appropriate to place the obligation or investment of the state entity, as represented by bonds or investments, in whole or in part, on the interest rate cash flow or other basis desired by the state entity. Such contract or other arrangement may include contracts providing for payments based on levels of, or changes in, interest rates. These contracts or arrangements may be entered into by the state entity in connection with, or incidental to, entering into, or maintaining

any (i) agreement that secures bonds or (ii) investment, or contract providing for investment, otherwise authorized by law. These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the state entity, after giving due consideration to the creditworthiness of the counterparty or other obligated party, including any rating by a nationally recognized rating agency, and any other criteria as may be appropriate. The determinations referred to in this subsection may be made by the Treasury Board, the governing body of the state entity or any public funds manager with professional investment capabilities duly authorized by the Treasury Board or the governing body of any state entity authorized to issue such obligations to make such determinations.

As used in this section, "state entity" means the Commonwealth and all agencies, authorities, boards and institutions of the Commonwealth.

B. Any money set aside and pledged to secure payments of bonds or any of the contracts entered into pursuant to this section may be invested in accordance with this chapter and may be pledged to and used to service any of the contracts or other arrangements entered into pursuant to this section.

2002, c. 407.

§ 2.2-4518. Investment of funds in deposits

A. Notwithstanding any provision of law to the contrary, the Commonwealth and all public officers, municipal corporations, other political subdivisions, and all other public bodies of the Commonwealth, each referred to in this section as a "public entity," may invest any or all of the moneys belonging to them or within their control in accordance with the following conditions:

1. The moneys are initially invested through any federally insured bank or savings institution selected by the public entity that is qualified by the Virginia Treasury Board to accept public deposits;

2. The selected bank or savings institution arranges for the deposit of the moneys in one or more federally insured banks or savings institutions wherever located, for the account of the public entity;

3. The full amount of principal and any accrued interest of each such deposit is covered by federal deposit insurance;

4. The selected bank or savings institution acts as custodian for the public entity with respect to each deposit issued for the public entity's account; and

5. At the same time that the public entity's moneys are deposited, the selected bank or savings institution receives an amount of deposits from customers of other financial institutions wherever located equal to or greater than the amount of moneys invested by the public entity through the selected bank or savings institution.

B. After deposits are made in accordance with the conditions prescribed in subsection A, such deposits shall not be subject to the provisions of Chapter 44 (§ 2.2-4400 et seq.), § 2.2-4515, or any security or collateral requirements that may otherwise be applicable to the investment or deposit of public moneys by government investors.

2008, c. 103; 2010, c. 33.

§ 2.2-4519. Investment of funds by the Virginia Housing Development Authority and the Virginia Resources Authority

A. For purposes of §§ 36-55.44 and 62.1-221 only, the following investments shall be considered lawful investments and shall be conclusively presumed to have been prudent:

1. Obligations of the Commonwealth. Stocks, bonds, notes, and other evidences of indebtedness of the Commonwealth, and those unconditionally guaranteed as to the payment of principal and interest by the Commonwealth.

2. Obligations of the United States. Stocks, bonds, treasury notes, and other evidences of indebtedness of the United States, including the guaranteed portion of any loan guaranteed by the Small Business Administration, an agency of the United States government, and those unconditionally guaranteed as to the payment of principal and interest by the United States; bonds of the District of Columbia; bonds and notes of the Federal National Mortgage Association and the Federal Home Loan Banks; bonds, debentures, or other similar obligations of federal land banks, federal intermediate credit banks, or banks of cooperatives, issued pursuant to acts of Congress; and obligations issued by the United States Postal Service when the principal and interest thereon is guaranteed by the government of the United States. The evidences of indebtedness enumerated by this subdivision may be held directly, in the form of repurchase agreements collateralized by such debt securities, or in the form of securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, provided that the portfolio of such investment company or investment trust is limited to such evidences of indebtedness or repurchase agreements collateralized by such debt securities, or securities of other such investment companies or investment trusts whose portfolios are so restricted.

3. Obligations of other states. Stocks, bonds, notes, and other evidences of indebtedness of any state of the United States upon which there is no default and upon which there has been no default for more than 90 days, provided that within the 20 fiscal years next preceding the making of such investment, such state has not been in default for more than 90 days in the payment of any part of principal or interest of any debt authorized by the legislature of such state to be contracted.

4. Obligations of Virginia counties, cities, or other public bodies. Stocks, bonds, notes, and other evidences of indebtedness of any county, city, town, district, authority, or other public body in the Commonwealth upon which there is no default, provided that if the principal and interest is

payable from revenues or tolls and the project has not been completed, or if completed, has not established an operating record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, the standards of judgment and care required in the Uniform Prudent Investor Act (§ 64.2-780 et seq.), without reference to this section, shall apply.

In any case in which an authority, having an established record of net earnings available for payment of principal and interest equal to estimated requirements for that purpose according to the terms of the issue, issues additional evidences of indebtedness for the purposes of acquiring or constructing additional facilities of the same general character that it is then operating, such additional evidences of indebtedness shall be governed fully by the provisions of this section without limitation.

5. Obligations of cities, counties, towns, or districts of other states. Legally authorized stocks, bonds, notes, and other evidences of indebtedness of any city, county, town, or district situated in any one of the states of the United States upon which there is no default and upon which there has been no default for more than 90 days, provided that (i) within the 20 fiscal years next preceding the making of such investment, the city, county, town, or district has not been in default for more than 90 days in the payment of any part of principal or interest of any stock, bond, note, or other evidence of indebtedness issued by it; (ii) the city, county, town, or district shall have been in continuous existence for at least 20 years; (iii) the city, county, town, or district has a population, as shown by the federal census next preceding the making of such investment, of not less than 25,000 inhabitants; (iv) the stocks, bonds, notes, or other evidences of indebtedness in which such investment is made are the direct legal obligations of the city, county, town, or district issuing the same; (v) the city, county, town, or district has power to levy taxes on the taxable real property therein for the payment of such obligations without limitation of rate or amount; and (vi) the net indebtedness of the city, county, town, or district, including the issue in which such investment is made, after deducting the amount of its bonds issued for self-sustaining public utilities, does not exceed 10 percent of the value of the taxable property in the city, county, town, or district, to be ascertained by the valuation of such property therein for the assessment of taxes next preceding the making of such investment.

6. Obligations subject to repurchase. Investments set forth in subdivisions 1 through 5 may also be made subject to the obligation or right of the seller to repurchase these on a specific date.

7. Bonds secured on real estate. Bonds and negotiable notes directly secured by a first lien on improved real estate or farm property in the Commonwealth, or in any state contiguous to the Commonwealth within a 50-mile area from the borders of the Commonwealth, not to exceed 80 percent of the fair market value of such real estate, including any improvements thereon at the time of making such investment, as ascertained by an appraisal thereof made by two reputable persons who are not interested in whether or not such investment is made.

8. Bonds secured on city property in Fifth Federal Reserve District. Bonds and negotiable notes directly secured by a first lien on improved real estate situated in any incorporated city in any of the states of the United States which lie wholly or in part within the Fifth Federal Reserve District of the United States as constituted on June 18, 1928, pursuant to the act of Congress of December 23, 1913, known as the Federal Reserve Act, as amended, not to exceed 60 percent of the fair market value of such real estate, with the improvements thereon, at the time of making such investment, as ascertained by an appraisal thereof made by two reputable persons who are not interested in whether or not such investment is made, provided that such city has a population, as shown by the federal census next preceding the making of such investments, of not less than 5,000 inhabitants.

9. Bonds of Virginia educational institutions. Bonds of any of the educational institutions of the Commonwealth that have been or may be authorized to be issued by the General Assembly.

10. Securities of the Richmond, Fredericksburg and Potomac Railroad Company. Stocks, bonds, and other securities of the Richmond, Fredericksburg and Potomac Railroad Company, including bonds or other securities guaranteed by the Richmond, Fredericksburg and Potomac Railroad Company.

11. Obligations of railroads. Bonds, notes, and other evidences of indebtedness, including equipment trust obligations, which are direct legal obligations of or which have been unconditionally assumed or guaranteed as to the payment of principal and interest by, any railroad corporation operating within the United States that meets the following conditions and requirements:

a. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have not been less than $10 million;

b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned an average of at least two times annually during the seven fiscal years preceding the making of the investment and at least one and one-half times during the fiscal year immediately preceding the making of the investment. The term "total fixed charges" as used in this subdivision and subdivision c shall be deemed to refer to the term used in the accounting reports of common carriers as prescribed by the regulations of the Interstate Commerce Commission; and

c. The aggregate of the average market prices of the total amounts of each of the individual securities of such corporation junior to its bonded debt and outstanding at the time of the making of such investment shall be equal to at least two-thirds of the total fixed charges for such railroad corporation for the fiscal year next preceding the making of such investment capitalized at an annual interest rate of five percent. Such average market price of any one of such individual securities shall be determined by the average of the highest quotation and the lowest quotation of the

individual security for a period immediately preceding the making of such investment, which period shall be the full preceding calendar year plus the then-expired portion of the calendar year in which such investment is made, provided that if more than six months of the calendar year in which such investment is made shall have expired, then such period shall be only the then-expired portion of the calendar year in which such investment is made, and provided further that if such individual security shall not have been outstanding during the full extent of such period, such period shall be deemed to be the length of time such individual security shall have been outstanding.

12. Obligations of leased railroads. Stocks, bonds, notes, other evidences of indebtedness, and any other securities of any railroad corporation operating within the United States, the railroad lines of which have been leased by a railroad corporation, either alone or jointly with other railroad corporations, whose bonds, notes, and other evidences of indebtedness shall, at the time of the making of such investment, qualify as lawful investments for fiduciaries under the terms of subdivision 11, provided that the terms of such lease shall provide for the payment by such lessee railroad corporation individually, irrespective of the liability of other joint lessee railroad corporations, if any, in this respect, of an annual rental of an amount sufficient to defray the total operating expenses and maintenance charges of the lessor railroad corporation plus its total fixed charges, plus, in the event of the purchase of such a stock, a fixed dividend upon any issue of such stock in which such investment is made, and provided that if such investment so purchased shall consist of an obligation of definite maturity, such lease shall be one which shall, according to its terms, provide for the payment of the obligation at maturity or extend for a period of not less than 20 years beyond the maturity of such obligations so purchased, or if such investment so purchased shall be a stock or other form of investment having no definite date of maturity, such lease shall be one which shall, according to its terms, extend for a period of at least 50 years beyond the date of the making of such investment.

13. Equipment trust obligations. Equipment trust obligations issued under the "Philadelphia Plan" in connection with the purchase for use on railroads of new standard gauge rolling stock, provided that the owner, purchaser, or lessee of such equipment, or one or more of such owners, purchasers, or lessees, shall be a railroad corporation whose bonds, notes, and other evidences of indebtedness shall, at the time of the making of such investment, qualify as lawful investments for fiduciaries under the terms of subdivision 11, and provided that all of such owners, purchasers, or lessees shall be both jointly and severally liable under the terms of such contract of purchase or lease, or both, for the fulfillment thereof.

14. Preferred stock of railroads. Any preference stock of any railroad corporation operating within the United States, provided such stock and such railroad corporation meet the following conditions and requirements:

a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;

b. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $10 million;

c. The total fixed charges, as defined in subdivision 11 b, of such corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned an average of at least two and one-half times annually for the seven fiscal years preceding the making of such investment and at least two times for the fiscal year immediately preceding the making of such investment; and

d. The aggregate of the average market prices of the total amount of each of the individual securities of such corporation, junior to such preference stock and outstanding at the time of the making of such investment, shall be at least equal to the par value of the total issue of the preference stock in question plus the total par value of all other issues of its preference stock having either the same rank as, or a senior rank to, the issue of such preference stock plus total fixed charges, as defined in subdivision 11 b, for such railroad corporation for the fiscal year next preceding the making of such investment capitalized at an annual interest rate of five percent. Such average market price of any one of such individual securities shall be determined in the same manner as prescribed in subdivision 11 c.

15. Obligations of public utilities. Bonds, notes, and other evidences of indebtedness of any public utility operating company operating within the United States, provided such company meets the following conditions and requirements:

a. The gross operating revenue of such public utility operating company for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $5 million;

b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned, after deducting operating expenses, depreciation, and taxes, other than income taxes, an average of at least one and three-quarters times annually during the seven fiscal years preceding the making of the investment and at least one and one-half times during the fiscal year immediately preceding the making of the investment;

c. In the fiscal year next preceding the making of such investment, the ratio of the total par value of the bonded debt of such public utility operating company, including the total bonded indebtedness of all its subsidiary companies, whether assumed by the public utility operating company in question or not, to its gross operating revenue shall not be greater than four to one; and

d. Such public utility operating company shall be subject to permanent regulation by a state commission or other duly authorized and recognized regulatory body.

The term "public utility operating company" as used in this subdivision and subdivision 16 means a public utility or public service corporation (i) of whose total income available for fixed charges for the fiscal year next preceding the making of such investment at least 55 percent thereof shall have been derived from direct payments by customers for service rendered them; (ii) of whose total operating revenue for the fiscal year next preceding the making of such investment at least 60 percent thereof shall have been derived from the sale of electric power, gas, water, or telephone service and not more than 10 percent thereof shall have been derived from traction operations; and (iii) whose gas properties are all within the limits of one state, if more than 20 percent of its total operating revenues are derived from gas.

16. Preferred stock of public utilities. Any preference stock of any public utility operating company operating within the United States, provided such stock and such company meet the following conditions and requirements:

a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;

b. The gross operating revenue of such public utility operating company for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $5 million;

c. The total fixed charges of such public utility operating company, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation, and taxes, including income taxes, an average of at least two times annually for the seven fiscal years preceding the making of such investment and at least two times for the fiscal year immediately preceding the making of such investment;

d. In the fiscal year next preceding the making of such investment, the ratio of the sum of the total par value of the bonded debt of such public utility operating company, the total par value of the issue of such preference stock, and the total par value of all other issues of its preference stock having the same or senior rank to its gross operating revenue shall not be greater than four to one; and

e. Such public utility operating company shall be subject to permanent regulation by a state commission or other duly authorized and recognized regulatory body.

17. Obligations of the following telephone companies. Bonds, notes, and other evidences of indebtedness of American Telephone and Telegraph, Bell Atlantic, Bell South, Southwestern Bell, Pacific Telesis, Nynex, American Information Technologies, or U.S. West, and bonds, notes, and other evidences of indebtedness unconditionally assumed or guaranteed as to the payment of principal and interest by any such company, provided that the total fixed charges, as reported for the fiscal year next preceding the making of the investment, of such company and all of its subsidiary corporations on a consolidated basis shall have been earned, after deducting operating expenses, depreciation, and taxes, other than income taxes, an average of at least one and three-fourths times annually during the seven fiscal years preceding the making of the investment and at least one and one-half times during the fiscal year immediately preceding the making of the investment.

18. Obligations of municipally owned utilities. The stocks, bonds, notes, and other evidences of indebtedness of any electric, gas, or water department of any state, county, city, town, or district whose obligations would qualify as legal for purchase under subdivision 3, 4, or 5, the interest and principal of which are payable solely out of the revenues from the operations of the facility for which the obligations were issued, provided that the department issuing such obligations meets the requirements applying to public utility operating companies as set out in subdivisions 15 a through c.

19. Obligations of industrial corporations. Bonds, notes, and other evidences of indebtedness of any industrial corporation incorporated under the laws of the United States or of any state thereof, provided such corporation meets the following conditions and requirements:

a. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $10 million;

b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned, after deducting operating expenses, depreciation, and taxes, other than income taxes, and depletion in the case of companies commonly considered as depleting their natural resources in the course of business, an average of at least three times annually during the seven fiscal years preceding the making of the investment and at least two and one-half times during the fiscal year immediately preceding the making of the investment;

c. The net working capital of such industrial corporation, as shown by its last published fiscal year-end statement prior to the making of such investment, or in the case of a new issue, as shown by the financial statement of such corporation giving effect to the issuance of any new security, shall be at least equal to the total par value of its bonded debt as shown by such statement; and

d. The aggregate of the average market prices of the total amounts of each of the individual securities of such industrial corporation, junior to its bonded debt and outstanding at the time of the making of such investment, shall be at least equal to the total par value of the bonded debt of such industrial corporation at the time of the making of such investment, such average market price of any one of such individual securities being determined in the same manner as prescribed in subdivision 11 c.

20. Preferred stock of industrial corporations. Any preference stock of any industrial corporation incorporated under the laws of the United States or of any state thereof, provided such stock and such industrial corporation meet the following conditions and requirements:

a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;

b. The gross operating revenue of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating revenue for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $10 million;

c. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation, and taxes, including income taxes, and depletion in the case of companies commonly considered as depleting their natural resources in the course of business, an average of at least four times annually for the seven fiscal years preceding the making of such investment and at least three times for the fiscal year immediately preceding the making of such investment;

d. The net working capital of such industrial corporation, as shown by its last published fiscal year-end statement prior to the making of such investment, or, in the case of a new issue, as shown by the financial statement of such corporation giving effect to the issuance of any new security, shall be at least equal to the total par value of its bonded debt plus the total par value of the issue of such preference stock plus the total par value of all other issues of its preference stock having the same or senior rank; and

e. The aggregate of the lowest market prices of the total amounts of each of the individual securities of such industrial corporation junior to such preference stock and outstanding at the time of the making of such investment shall be at least two and one-half times the par value of the total issue of such preference stock plus the total par value of all other issues of its preference stock having the same or senior rank plus the par value of the total bonded debt of such industrial corporation. Such lowest market price of any one of such individual securities shall be determined by the lowest single quotation of the individual security for a period immediately preceding the

making of such investment, which period shall be the full preceding calendar year plus the then-expired portion of the calendar year in which such investment is made, and if such individual security shall not have been outstanding during the full extent of such period, such period shall be deemed to be the length of time such individual security shall have been outstanding.

21. Obligations of finance corporations. Bonds, notes, and other evidences of indebtedness of any finance corporation incorporated under the laws of the United States or of any state thereof, provided such corporation meets the following conditions and requirements:

a. The gross operating income of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating income for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $5 million;

b. The total fixed charges of such corporation, as reported for the fiscal year next preceding the making of the investment, shall have been earned, after deducting operating expenses, depreciation, and taxes, other than income taxes, an average of at least two and one-half times annually during the seven fiscal years preceding the making of the investment and at least two times during the fiscal year immediately preceding the making of the investment;

c. The aggregate indebtedness of such finance corporation as shown by its last fiscal year-end statement, or, in the case of a new issue, as shown by the financial statement giving effect to the issuance of any new securities, shall be no greater than three times the aggregate net worth, as represented by preferred and common stocks and surplus of such corporation; and

d. The aggregate of the average market prices of the total amounts of each of the individual securities of such finance corporation, junior to its bonded debt and outstanding at the time of the making of such investment, shall be at least equal to one-third of the sum of the par value of the bonded debt plus all other indebtedness of such finance corporation as shown by the last published fiscal year-end statement, such average market price of any one of such individual securities being determined in the same manner as prescribed in subdivision 11 c.

22. Preferred stock of finance corporations. Any preference stock of any finance corporation incorporated under the laws of the United States or of any state thereof, provided such stock and such corporation meet the following conditions and requirements:

a. Such stock shall be preferred as to dividends, such dividends shall be cumulative, and such stock shall be preferred as to assets in the event of liquidation or dissolution;

b. The gross operating income of such corporation for the fiscal year preceding the making of such investment, or the average of the gross operating income for the five fiscal years next preceding the making of such investment, whichever of these two is the larger, shall have been not less than $5 million;

c. The total fixed charges of such finance corporation, as reported for the fiscal year next preceding the making of such investment, plus the amount, at the time of making such investment, of the annual dividend requirements on such preference stock and any preference stock having the same or senior rank, such fixed charges and dividend requirements being considered the same for every year, shall have been earned, after deducting operating expenses, depreciation, and taxes, including income taxes, an average of at least three and one-half times annually for the seven fiscal years preceding the making of such investment and at least three times for the fiscal year immediately preceding the making of such investment;

d. The aggregate indebtedness and par value of the purchased stock, both the issue in question and any issues equal or senior thereto, of such finance corporation as shown by its last published fiscal year-end statement, or, in the case of a new issue, as shown by the financial statement giving effect to the issuance of any new securities, shall be no greater than three times the aggregate par value of the junior securities and surplus of such corporation; and

e. The aggregate of the lowest market prices of the total amounts of each of the individual securities of such finance corporation junior to such preference stock and outstanding at the time of the making of such investment shall be at least equal to one-third of the sum of the par value of such preference stock plus the total par value of all other issues of preference stock having the same or senior rank plus the par value of the total bonded debt plus all other indebtedness of such finance corporation as shown by the last published fiscal year-end statement, such lowest market price of any one of such individual securities being determined in the same manner as prescribed in subdivision 20 e.

23. Federal housing loans. First mortgage real estate loans insured by the Federal Housing Administrator under Title II of the National Housing Act.

24. Certificates of deposit and savings accounts. Certificates of deposit of, and savings accounts in, any bank, banking institution, or trust company, whose deposits are insured by the Federal Deposit Insurance Corporation at the prevailing rate of interest on such certificates or savings accounts; however, no such fiduciary shall invest in such certificates of, or deposits in, any one bank, banking institution, or trust company an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured as a deposit in such bank, banking institution, or trust company by the Federal Deposit Insurance Corporation. A corporate fiduciary shall not, however, be prohibited by the terms of this subdivision from depositing in its own banking department, in the form of demand deposits, savings accounts, time deposits, or certificates of deposit, funds in any amount awaiting investments or distribution, provided that it shall have complied with the provisions of §§ 6.2-1005 and 6.2-1007, with reference to the securing of such deposits.

25. Obligations of International Bank, Asian Development Bank, and African Development Bank. Bonds and other obligations issued, guaranteed, or assumed by the International Bank for Reconstruction and Development, the Asian Development Bank, or the African Development Bank.

26. Deposits in savings institutions. Certificates of deposit of, and savings accounts in, any state or federal savings institution or savings bank lawfully authorized to do business in the Commonwealth whose accounts are insured by the Federal Deposit Insurance Corporation or other federal insurance agency; however, no such fiduciary shall invest in such shares of any one such association an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured as an account in such association by the Federal Deposit Insurance Corporation or other federal insurance agency.

27. Certificates evidencing ownership of undivided interests in pools of mortgages. Certificates evidencing ownership of undivided interests in pools of bonds or negotiable notes directly secured by first lien deeds of trust or mortgages on real property located in the Commonwealth improved by single-family residential housing units or multi-family dwelling units, provided that (i) such certificates are rated AA or better by a nationally recognized independent rating agency; (ii) the loans evidenced by such bonds or negotiable notes do not exceed 80 percent of the fair market value, as determined by an independent appraisal thereof, of the real property and the improvements thereon securing such loans; and (iii) such bonds or negotiable notes are assigned to a corporate trustee for the benefit of the holders of such certificates.

28. Shares in credit unions. Shares and share certificates in any credit union lawfully authorized to do business in the Commonwealth whose accounts are insured by the National Credit Union Share Insurance Fund or the Virginia Credit Union Share Insurance Corporation, provided no such fiduciary shall invest in such shares an amount from any one fund in his or its care which shall be in excess of such amount as shall be fully insured as an account in such credit union by the National Credit Union Share Insurance Fund or the Virginia Credit Union Share Insurance Corporation.

B. Whenever under the terms of this section the par value of a preference stock is required to be used in a computation, there shall be used instead of such par value the liquidating value of such preference stock in the case of involuntary liquidation, as prescribed by the terms of its issue, in the event that such liquidating value shall be greater than the par value of such preference stock; or in the event that the preference stock in question has no par value, then such liquidating value shall be used instead; or when such preference stock shall be one of no par value and one for which no such liquidating value shall have been so prescribed, then for the purposes of such computation the preference stock in question shall be deemed to have a value of $100 per share.

C. When any security provided for in this section is purchased by a fiduciary and at the time of such purchase the statement for the preceding fiscal year of the corporation issuing the security so being purchased has not been published and is therefore not available, the statement of such corporation for the fiscal year immediately prior to such preceding fiscal year shall be considered the

statement for such preceding fiscal year and shall have the same force and effect as the statement for the fiscal year preceding such purchase, provided the date of such purchase is not more than four months after the end of the last fiscal year of the corporation.

D. In testing a new issue of securities under the provisions of this section, it shall be permissible, in determining the number of times that fixed charges or preferred dividend requirements have been earned, to use pro forma fixed charges or dividend requirements, provided the corporation or its corporate predecessor has been in existence for a period of not less than seven years.

E. Investments made under the provisions of this section, if in conformity with the requirements of this section at the time such investments were made, may be retained even though they cease to be eligible for purchase under the provisions of this section, but shall be subject to the provisions of the Uniform Prudent Investor Act (§ 64.2-780 et seq.).

2012, c. 614.

Chapter 46 - LOCAL GOVERNMENT INVESTMENT POOL ACT

§ 2.2-4600. Short title; definitions

This chapter may be cited as the "Local Government Investment Pool Act."

1980, c. 538, §§ 2.1-234.1, 2.1-234.3; 1996, c. 77; 2001, c. 844.

§ 2.2-4601. Findings and purpose

A. The General Assembly finds that the public interest is served by maximum and prudent investment of public funds so that the need for taxes and other public revenues is decreased commensurately with the earnings on such investments. In selecting among avenues of investment, the highest rate of return, consistent with safety and liquidity, shall be the objective.

B. The purpose of this chapter is to secure the maximum public benefit from the investment of public funds, and, in furtherance of such purposes to:

1. Establish and maintain a continuing statewide policy for the deposit and investment of public funds;

2. Establish a state-administered pool for the investment of local government funds; and

3. Authorize treasurers or any other person collecting, disbursing, or otherwise handling public funds to invest such public funds either in accordance with Chapter 45 (§ 2.2-4500 et seq.) of this title or through the local government investment pool created by the chapter.

C. The General Assembly finds that the objectives of this chapter will best be obtained through improved money management, emphasizing the primary requirements of safety and liquidity and recognizing the different investment objectives of operating and permanent funds.

1980, c. 538, § 2.1-234.2; 2001, c. 844.

§ 2.2-4602. Local government investment pool created

A. A local government investment pool is created, consisting of the aggregate of all funds from local officials handling public funds that are placed in the custody of the State Treasurer for investment and reinvestment as provided in this chapter.

B. The Treasury Board or its designee shall administer the local government investment pool on behalf of the participating local officials subject to regulations and guidelines adopted by the Treasury Board.

C. The Treasury Board or its designee shall invest moneys in the local government investment pool with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived. Specifically, the types of authorized investments for local government investment pool assets shall be limited to those set forth for local officials in Chapter 45 (§ 2.2-4500 et seq.) of this title.

D. A separate account for each participant in the fund shall be kept to record individual transactions and totals of all investments belonging to each participant. A monthly report showing the changes in investments made during the preceding month shall be furnished to each participant having a beneficial interest in the local government investment pool. Details of any investment transaction shall be furnished to any participant upon request.

E. The Treasury Board or its designee shall administer and handle the accounts in the same manner as bond and sinking fund trust accounts.

F. The principal and accrued income, and any part thereof, of each and every account maintained for a participant in the local government investment pool shall be subject to payment at any time from the local government investment pool upon request, subject to applicable regulations and guidelines. Accumulated income shall be remitted or credited to each participant at least quarterly.

G. Except as provided in this section, all instruments of title of all investments of the local government investment pool shall remain in the custody of the State Treasurer. The State Treasurer may deposit with one or more fiscal agents or banks, those instruments of title he considers advisable, to be held in safekeeping by the agents or banks for collection of the principal and interest or other income, or of the proceeds of sale. The State Treasurer shall collect the principal and interest or other income from investments of the investment pool, the instruments of title to which are in his custody, when due and payable.

1980, c. 538, § 2.1-234.8; 1984, c. 320; 1988, c. 834; 2001, c. 844.

§ 2.2-4603. Investment authority

Subject to the procedures set forth in this chapter, any local official handling public funds may invest and reinvest any money subject to his control and jurisdiction in the local government investment pool established by § 2.2-4602.

1980, c. 538, § 2.1-234.4; 1988, c. 834; 2001, c. 844.

§ 2.2-4604. Interfund pooling for investment purposes

Local officials handling public funds may effect temporary transfers among separate funds for the purpose of pooling amounts available for investment. This pooling may be accomplished through interfund advances and other appropriate means consistent with recognized principles of governmental accounting provided that (i) moneys are available for the investment period required; (ii) the investment fund can repay the advance by the time needed; (iii) the transactions are fully and promptly recorded; and (iv) the interest earned is credited to the loaning or advancing jurisdiction.

1980, c. 538, § 2.1-234.6; 1981, c. 583; 2001, c. 844.

§ 2.2-4605. Powers of Treasury Board relating to the administration of local government investment pool

A. The Treasury Board shall have power to:

1. Make and adopt regulations necessary and proper for the efficient administration of the local government investment pool hereinafter created, including but not limited to:

a. Specification of minimum amounts that may be deposited in the local government investment pool and minimum periods of time for which deposits shall be retained in such pool;

b. Creation of a reserve for losses;

c. Payment of administrative expenses from the earnings of such pool;

d. Distribution of the earnings in excess of such expenses, or allocation of losses, to the several participants in a manner that equitably reflects the differing amounts of their respective investments and the differing periods of time for which such amounts were in the custody of the pool; and

e. Procedures for the deposit and withdrawal of funds.

2. Develop guidelines for the protection of the local government investment pool in the event of default in the payment of principal or interest or other income of any investment of such pool, such guidelines to include the following procedures:

a. Instituting the proper proceedings to collect the matured principal or interest or other income;

b. Accepting for exchange purposes refunding bonds or other evidences of indebtedness at appropriate interest rates;

c. Making compromises, adjustments, or disposition of matured principal or interest or other income as considered advisable for the purpose of protecting the moneys invested;

d. Making compromises or adjustments as to future payments of principal or interest or other income considered advisable for the purpose of protecting the moneys invested.

3. Formulate policies for the investment and reinvestment of funds in the local government investment pool and the acquisition, retention, management, and disposition of investments of the investment pool.

B. The Treasury Board may delegate the administrative aspects of operating under this chapter to the State Treasurer, subject to the regulations and guidelines adopted by the Treasury Board.

C. Such regulations and guidelines may be adopted without complying with the Administrative Process Act (§ 2.2-4000 et seq.) provided that input is solicited from local officials handling public funds. Such input requires only that notice and an opportunity to submit written comments be given.

1980, c. 538, § 2.1-234.7; 2001, c. 844.

§ 2.2-4606. Chapter controlling over inconsistent laws; powers supplemental

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

1980, c. 538, § 2.1-234.9; 2001, c. 844.

Chapter 47 - GOVERNMENT NON-ARBITRAGE INVESTMENT ACT

§ 2.2-4700. Authorization to Treasury Board to provide certain assistance

A. This chapter shall be known, and may be cited, as the "Government Non-Arbitrage Investment Act."

B. The General Assembly authorizes the Treasury Board to make available to the Commonwealth, to counties, cities and towns in the Commonwealth, and to their agencies, institutions, and authorities or any combination of the foregoing assistance as provided in this chapter in making and accounting for such investments.

1988, c. 498, § 2.1-234.9:1; 1990, c. 516; 1991, c. 245; 2001, c. 844.

§ 2.2-4701. Definitions

As used in this chapter, unless the context requires a different meaning:

"Bonds" means bonds or other obligations issued by the Commonwealth, by counties, cities and towns, and by their agencies, institutions, and authorities or by any combination of the foregoing under the provisions of the Public Finance Act (§ 15.2-2600 et seq.), or otherwise, the interest on which is intended to be excludable from the gross income of the recipients thereof for federal income tax purposes.

"Depository institution" means any commercial bank, trust company, or savings institution insured by an agency or instrumentality of the United States government.

"Issuers" means the Commonwealth, counties, cities and towns in the Commonwealth, and their agencies, institutions, and authorities.

"Official handling public funds" or "official" means the treasurer of the issuer or, if there is no officer known as treasurer of the issuer, the chief financial officer of the issuer, and any person or entity described in § 58.1-3123.

1988, c. 498, § 2.1-234.9:2; 1990, c. 516; 1991, c. 245; 1996, c. 77; 2001, c. 844.

§ 2.2-4702. Powers of the Treasury Board under this chapter

The Treasury Board shall have power to:

1. Provide assistance to issuers in the management of and accounting for their funds, including, without limitation, bond proceeds, reserves and sinking funds, and the investment thereof, any portion of the investment earnings on which is or may be subject to rebate to the federal government.

2. Manage, acquire, hold, trade and sell investment obligations, for and on behalf of issuers or a pool or pools, and not for its own account, that are authorized investments for issuer bond proceeds, reserves, sinking funds or other funds, as the case may be.

3. Establish one or more pools of the issuer bond proceeds, reserves, sinking funds or other funds that are placed in the custody of the State Treasurer for investment and reinvestment in authorized investments.

4. Adopt regulations necessary and proper for the efficient administration of the pools authorized by this chapter without complying with the Administrative Process Act (§ 2.2-4000 et seq.), provided that notice and an opportunity to submit written comments on such regulations be given to officials handling public funds.

5. Formulate policies for the investment and reinvestment of funds under management, including funds in the pool or pools, and the acquisition, retention, management and disposition of investments.

6. Delegate the administration of this chapter to the State Treasurer, subject to the regulations and guidelines adopted by the Treasury Board.

7. Retain employees and engage and enter into contracts with independent investment managers, accountants, counsel, depository institutions and other advisors and agents, as may be necessary or convenient.

8. Enter into contracts with issuers with respect to the performance of investment services.

9. Charge issuers for the costs of its investment services and for its expenses.

10. Do any and all other acts and things necessary, appropriate or incidental in carrying out the purposes of this chapter.

1988, c. 498, § 2.1-234.9:3; 1990, c. 516; 2001, c. 844.

§ 2.2-4703. Powers of issuers

Any provision of any general or special law or of any charter to the contrary notwithstanding, issuers may use the investment services of the Treasury Board and for that purpose may enter into contracts with the Treasury Board and its agents.

1988, c. 498, § 2.1-234.9:4; 1990, c. 516; 2001, c. 844.

§ 2.2-4704. Alternative method

This chapter shall be deemed to provide an additional, alternative method for the performance of actions authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing.

1988, c. 498, § 2.1-234.9:5; 2001, c. 844.

§ 2.2-4705. Liberal construction; inconsistent laws inapplicable

A. This chapter, being necessary for the welfare of the people of the Commonwealth, shall be liberally construed to effect the purposes thereof.

B. Insofar as the provisions of this chapter are inconsistent with the provisions of any general or special laws or charters, or parts thereof, the provisions of this chapter shall control.

1988, c. 498, §§ 2.1-234.9:6, 2.1-234.9:7; 2001, c. 844.

Chapter 48 - VIRGINIA DEBT COLLECTION ACT

§ 2.2-4800. Policy of the Commonwealth; collection of accounts receivable

This chapter establishes the policy of the Commonwealth as it relates to the accounting for, management and collection of all accounts receivable due to the Commonwealth. It shall be the policy of the Commonwealth that all state agencies and institutions shall take all appropriate and cost-effective actions to aggressively collect all accounts receivable. All state agencies and institutions shall be subject to this chapter and shall establish internal policies and procedures for the management and collection of accounts receivable that are in accordance with regulations adopted by the Department of Accounts and the Office of the Attorney General.

1988, c. 544, § 2.1-727; 2001, c. 844.

§ 2.2-4801. Definitions

As used in this chapter, unless the context requires a different meaning:

"Administrative offset" includes, but is not limited to, offsetting any monies, except those specifically exempted by state or federal law, paid by agency or institution for a debt owed to any other state agency or institution.

"Accounts receivable" refers to the classification of debts due the Commonwealth, including judgments, fines, costs, and penalties imposed upon conviction for criminal and traffic offenses, and as defined in the guidelines adopted by the State Comptroller.

"Discharge" means the compromise and settlement of disputes, claims, and controversies of the Commonwealth by the Office of the Attorney General as authorized by § 2.2-514.

"Division" means the Division of Debt Collection of the Office of the Attorney General created pursuant to § 2.2-518.

"Past-due" means any account receivable for which payment has not been received by the payment due date.

"State agency and institution" means any authority, board, department, instrumentality, agency or other unit in any branch of state government. The term shall not include any county, city or town, or any local or regional governmental authority or any "nonstate agency" as defined in the appropriation act.

"Write-off" means a transaction to remove from an agency's financial accounting records an account receivable that management has determined to be uncollectible.

1988, c. 544, § 2.1-726; 1994, c. 565; 2001, c. 844; 2009, c. 797.

§ 2.2-4802. Responsibility for accounts receivable policy; reports

The Department of Accounts shall be the primary state agency responsible for the oversight, reporting and monitoring of the Commonwealth's accounts receivable program.

The Department of Accounts shall adopt necessary policies and procedures for reporting, accounting for, and collecting the Commonwealth's accounts receivable. The Department of Accounts is also charged with adopting regulations concerning guidelines and procedures for writing off accounts receivable.

1988, c. 544, § 2.1-728; 2001, c. 844.

§ 2.2-4803. Legal counsel

The Office of the Attorney General shall be the primary agency responsible for the provision of all legal services and advice related to the collection of accounts receivable, pursuant to § 2.2-507.

The Attorney General shall adopt necessary policies and procedures pertaining to all accounts receivable legal matters and the litigation of past-due accounts receivable that shall be published together with the policies and procedures adopted by the Department of Accounts.

1988, c. 544, § 2.1-729; 2001, c. 844.

§ 2.2-4804. Annual reports

The Department of Accounts and the Attorney General shall annually report to the Governor, the Secretary of Finance and the Chairmen of the Senate Committee on Finance and the House Committee on Appropriations those agencies and institutions that are not making satisfactory progress toward implementing the provisions of this chapter and establishing effective accounts receivable programs.

1988, c. 544, § 2.1-730; 2001, c. 844.

§ 2.2-4805. Interest, administrative charges and penalty fees

A. Each state agency and institution may charge interest on all past due accounts receivable in accordance with guidelines adopted by the Department of Accounts. Each past due accounts receivable may also be charged an additional amount that shall approximate the administrative costs arising under § 2.2-4806. Agencies and institutions may also assess late penalty fees, not in excess of ten percent of the past-due account on past-due accounts receivable. The Department of Accounts shall adopt regulations concerning the imposition of administrative charges and late penalty fees.

B. Failure to pay in full at the time goods, services, or treatment are rendered by the Commonwealth or when billed for a debt owed to any agency of the Commonwealth shall result in the imposition of interest at the judgment rate as provided in § 6.2-302 on the unpaid balance unless a higher interest rate is authorized by contract with the debtor or provided otherwise by statute. Interest shall begin to accrue on the 60th day after the date of the initial written demand for payment. A public institution of higher education in the Commonwealth may elect to impose a late fee in addition to, or in lieu of, interest for such time as the institution retains the claim pursuant to subsection D of § 2.2-4806. Returned checks or dishonored credit card or debit card payments shall incur a handling fee of $50 unless a higher amount is authorized by statute to be added to the principal account balance.

C. If the matter is referred for collection to the Division, the debtor shall be liable for reasonable attorney fees unless higher attorney fees are authorized by contract with the debtor.

D. A request for or acceptance of goods or services from the Commonwealth, including medical treatment, shall be deemed to be acceptance of the terms specified in this section.

1988, c. 544, § 2.1-732; 2001, c. 844; 2009, c. 797.

§ 2.2-4806. Utilization of certain collection techniques

A. Each state agency and institution shall take all appropriate and cost-effective actions to aggressively collect its accounts receivable. Each agency and institution shall utilize, but not be limited to, the following collection techniques, according to the policies and procedures required by the Department of Accounts and the Division: (i) credit reporting bureaus, (ii) collection agencies, (iii) garnishments, liens and judgments, (iv) administrative offset, and (v) participation in the Treasury Offset Program of the United States under 31 U.S.C. § 3716.

B. Except as provided otherwise herein, for collection of accounts receivable of $3,000 or more that are 60 days past due, each agency and institution shall forward those claims to the Division for collection. The Division shall review forwarded accounts, determine the appropriate collection efforts, if any, for each account, and take such actions on the accounts as the Division may so determine.

C. Except as provided otherwise herein, for collection of accounts receivable under $3,000 that are 60 days past due, each agency and institution shall contract with a private collection agency for the collection of those debts. Prior to referring accounts receivable of less than $3,000, agencies

and institutions may refer such accounts to the Division. The Division may accept the account for collection or return it to the agency or institution for collection by a private collection agency.

D. Except as otherwise provided in this subsection, where a debtor is paying a debt in periodic payments to an agency or institution, the agency or institution may elect to retain the claim in excess of 60 days provided that such periodic payments are promptly paid until the account is satisfied. In the event the debtor is delinquent (i) by 60 days in paying a periodic payment or (ii) for such other period of time approved by the Division, the account shall be handled in the manner provided by subsections B and C of this section.

E. Each state agency and institution shall report and pay required fees to the Division as required by subsection C of § 2.2-518.

1988, c. 544, § 2.1-733; 2001, c. 844; 2004, c. 919; 2008, cc. 314, 637; 2009, c. 797.

§ 2.2-4807. Debtor information and skip-tracing

Each agency and institution shall collect minimum prescribed information from clients, debtors, and payees. Debtor information available from state agencies, credit reporting bureaus and other appropriate sources shall be used for the purpose of skip-tracing debtors, as specified in the guidelines of the Department of Accounts and the Attorney General. The minimum prescribed information to be collected shall include the federal employer identification number of partnerships, proprietorships, and corporate clients, debtors, and payees. This minimum prescribed information shall be included in the contract payment clause required by § 2.2-4354. The Department of Accounts may require that the minimum prescribed information be supplied on any request for payment, including invoices.

1988, c. 544, § 2.1-734; 1992, c. 110; 2001, c. 844.

§ 2.2-4808. Provision of state services to delinquent debtors

Each state agency and institution shall develop internal policies and procedures, in accordance with accounts receivable policies of the Department of Accounts and the Attorney General, for delaying or withholding certain state services to those persons who refuse to pay their debts.

1988, c. 544, § 2.1-735; 2001, c. 844.

§ 2.2-4809. Agreement authorized; setoff federal debts

A. The Comptroller is authorized to enter into an agreement with the United States to participate in the Treasury Offset Program pursuant to 31 U.S.C. § 3716 for the collection of any debts owed to state agencies. The agreement may provide for the United States to submit debts owed to federal agencies for offset against state payments similar to the procedures for offsetting debts owed to state agencies.

B. The Treasurer shall reduce any state payment by the amount of any federal debt submitted in accordance with the agreement authorized by this section, and pay such amount to the appropriate federal official in accordance with the procedures specified in such agreement.

2008, c. 314.

Chapter 49 - PUBLIC DEBT; ISSUANCE OF BONDS AND CERTIFICATES OF INDEBTEDNESS

§ 2.2-4900. Authority of Governor to contract debts

The Governor may contract debts and issue obligations in evidence thereof upon the terms and conditions determined by the Governor to meet casual deficits in the revenue or in anticipation of the collection of revenues of the Commonwealth for the then current fiscal year within the amount of authorized appropriations, subject to the limitations and conditions of Article X, Section 9 (a) (2) of the Constitution of Virginia. The Governor may sell such obligations in a manner, either at public or private sale, and for a price as he determines to be in the best interests of the Commonwealth.

Code 1950, § 2-269; 1966, c. 677, § 2.1-303; 1971, Ex. Sess., c. 121; 2001, c. 844.

§ 2.2-4901. Acts concerning issuance of bonds and certificates of indebtedness continued in effect

The following sections of the Code of 1919 and the following subsequent acts, all relating to the issue and terms of, and provisions with respect to certain bonds or certificates of indebtedness of the Commonwealth, are continued in effect.

(1) Sections 2584 to 2602, inclusive, of the Code of 1919;

(2) Chapter 93 of the Acts of 1927, approved April 18, 1927;

(3) Chapter 91 of the Acts of 1932, approved March 3, 1932, codified as §§ 2641 (1)-2641 (11) of Michie Code 1942; and

(4) Chapter 203 of the Acts of 1936, approved March 14, 1936.

Code 1950, § 2-270; 1966, c. 677, § 2.1-304; 2001, c. 844.

§ 2.2-4902. Ratings of bonds issued by governmental instrumentalities

A. As used in this section, unless the context requires a different meaning:

"Bond" means any bonds, refunding bonds, notes, debentures, interim certificates, or any bond, grant, revenue anticipation notes or any other evidences of indebtedness, whether in temporary or definitive form and whether or not the interest thereon is exempt from federal taxation.

"Governmental instrumentality" means each department, institution, commission, public corporate instrumentality, or agency of the Commonwealth, including the Commonwealth itself, and each political subdivision thereof, including but without limitation each public authority and district and each county, city or town and each instrumentality thereof which under law has the power to issue bonds.

B. Notwithstanding any provision contained in any general or special law or in any charter of any county, city or town of the Commonwealth, any rating of bonds issued by a governmental instrumentality shall be provided by a bond rating agency approved by the State Treasurer.

C. In addition to all of his other powers and duties, the State Treasurer shall prepare a list of approved bond rating agencies and upon request provide a copy thereof to all governmental instrumentalities.

1997, c. 381, § 2.1-304.1:1; 2001, c. 844.

§ 2.2-4902.1. Pledges and security interests created by governmental units

Except for security interests, liens or pledges in goods or software, or the proceeds thereof, described in § 8.9A-109(e), the creation, perfection, priority and enforcement of a security interest, lien or pledge created, made or granted by the Commonwealth or a governmental unit of the Commonwealth, as defined in § 8.9A-102, to pay or secure any bonds, notes, obligations or other debt securities, herein collectively called "bonds," shall be governed by this section, the provisions of law under which the bonds were authorized, and the ordinance, resolution, trust agreement, indenture, financing agreement or similar instrument securing the bonds, herein called the "security interest." Property pledged or in which a security interest is created for the payment or security of any bonds, whether presently held by the governmental unit or as thereafter received by or otherwise credited to the governmental unit, shall immediately be subject to the lien of such pledge or security interest without any physical delivery, control, filing or further act. The lien of such pledge or security interest made or granted in the security instrument shall have priority over any other obligations or liabilities of the governmental unit, except as may be otherwise provided in the security instrument. The lien of each such pledge or security interest shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against the governmental unit regardless of whether such persons have notice of such pledge or security interest.

2001, cc. 289, 296, § 2.1-304.1:2.

§ 2.2-4903. Governor's consideration of tax-supported debt

Prior to the Governor recommending any new tax-supported debt, which is defined as debt for which the debt service payments are expected to be made, in whole or in part, from appropriations of the Commonwealth, the Governor shall consider the maximum amount of debt recommended as prudent for the subject biennium by the Debt Capacity Advisory Committee created pursuant to § 2.2-2712.

1994, c. 43, § 2.1-304.5; 2001, c. 844.

§ 2.2-4904. Cooperation of the Commonwealth's instrumentalities

All Commonwealth debt-issuing agencies, institutions, boards, and authorities shall quarterly provide the State Treasurer with all information necessary to carry out the requirements of this chapter. The Departments of Accounts, Planning and Budget, and Taxation and other state

agencies shall also provide the State Treasurer with the information and assistance the Debt Capacity Advisory Committee deems necessary.

1994, c. 43, § 2.1-304.6; 1997, c. 187; 2001, c. 844.

§ 2.2-4905. Limitation of chapter

This chapter shall not limit or alter the rights of the Commonwealth or any of its instrumentalities to fulfill the terms of any agreements made with the holders of any bonds, notes, or other obligations of the Commonwealth or such instrumentality issued and outstanding prior to July 1, 1994, or to in any way impair the rights and remedies of such holders.

1994, c. 43, § 2.1-304.7; 2001, c. 844.

§ 2.2-4906. How lost bond or certificate renewed

When any bond or certificate is lost or destroyed, the owner thereof may:

1. File in the office of the State Treasurer an affidavit, setting forth the time, place and circumstance of the loss or destruction; and

2. Execute a bond to the Commonwealth, with one or more sureties, approved by the State Treasurer, with condition to indemnify the Commonwealth and all persons against any loss in consequence of issuing a new bond or certificate in place of the one so lost or destroyed.

If the owner performs these acts, the State Treasurer may issue, at any time before the bond or certificate becomes due and payable, or at any time as to any such bond or certificate that has become due and payable on or after July 1, 1932, a new bond or certificate and register the same.

Code 1950, § 2-281; 1966, c. 677, § 2.1-313; 1997, c. 310; 2001, c. 844.

Chapter 50 - INTEREST ON CERTAIN OBLIGATIONS OF GOVERNMENT INSTRUMENTALITIES

§ 2.2-5000. Governmental instrumentalities authorized to issue bonds, etc., at rates of interest in excess of legal limits; sale of such bonds

A. Notwithstanding any limitation contained in any general or special law or in any charter of any city or town of the Commonwealth, a governmental instrumentality, which under law has the power to issue bonds, notes or other obligations (herein collectively called "bonds") to provide funds to carry out its public purposes, may issue such bonds at such rates of interest in excess of the rates now permitted by law as may be determined by the governing body empowered under law to authorize the issuance of bonds of such governmental instrumentality and to sell the bonds for a price it determines to be for the best interests of the Commonwealth and of such governmental instrumentality.

B. For the purposes of this chapter, "governmental instrumentality" means each department, institution, commission, public corporate instrumentality or agency of the Commonwealth and every

political subdivision of the Commonwealth including, but not limited to, each public authority and district and each county, city or town or instrumentality thereof.

1970, c. 1, § 2.1-326.1; 1990, c. 712; 2001, c. 844.

§ 2.2-5001. Manner of exercising authority

The authority vested in governmental instrumentalities under the provisions of this chapter may be exercised by the body authorized to issue such bonds without securing the further approval of any other body, board or agency that may have approved the issuance of such bonds and, in the case of bonds approved by election, without a further election, unless a lower maximum rate of interest was stated in the approval of such other body, board or agency or was stated on the ballot of such election.

1970, c. 1, § 2.1-326.2; 1972, c. 735; 1974, cc. 82, 650; 1976, c. 522; 2001, c. 844.

§ 2.2-5002. Power to issue obligations not to be denied because interest is subject to federal income taxation

The power of any governmental instrumentality, to issue or have issued on its behalf for authorized purposes, bonds, shall not be construed to be restricted or limited solely because the interest thereon is subject, in whole or in part, directly or indirectly, to federal income taxes.

1986, c. 137, § 2.1-326.2:1; 2001, c. 844.

§ 2.2-5002.1. Commonwealth tax-supported debt authorizations and treatment of net original issue premium

A. As used in this section, unless the context requires a different meaning:

"De minimis amount" means an amount not to exceed two percent of the principal amount of tax-supported debt to be issued or incurred as part of the same series or issue;

"Net original issue premium" means the amount in excess of the principal amount of an issue or series of tax-supported debt to be paid by the initial purchaser or purchasers at original issuance or incurrence, less (i) the accrued interest, if any, on such tax-supported debt and (ii) any discount or discounts received by the initial purchaser or purchasers on any maturities or portions of such tax-supported debt; and

"Tax-supported debt" means, collectively, bonds, notes or other obligations constituting tax-supported debt within the meaning of § 2.2-4903 issued or incurred on or after July 1, 2012.

B. Notwithstanding any provision to the contrary contained in any general or special law of the Commonwealth, each state agency, institution, board, or authority that has been authorized to issue or incur or have outstanding tax-supported debt at one time or from time to time up to a specific principal amount or aggregate principal amount, shall in determining compliance with such authorization treat as principal the amount of any net original issue premium in excess of a de minimis amount received from the issuance or incurrence of such tax-supported debt.

C. The provisions of this section shall not apply to refunding tax-supported debt, which, to the extent otherwise authorized by law, may be issued or incurred with or without original issue premium in a principal amount up to the amount necessary to pay at maturity or redeem the tax-supported debt to be refunded and pay all issuance costs and other financing expenses of the refunding.

D. The Treasury Board shall have the power to establish guidelines to carry out the intent of this section.

2012, c. 324.

§ 2.2-5003. Chapter controlling over inconsistent laws; powers supplemental

Insofar as the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter shall be controlling and the powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

1970, c. 1, § 2.1-326.3; 2001, c. 844.

Chapter 50.1 - MANAGEMENT STANDARDS

§ 2.2-5004. (Repealed effective October 1, 2016) Financial and administrative management standards for public institutions of higher education

For purposes of this chapter:

"Public institution of higher education" means the same as that term is defined in § 23-38.89.

A. Every public institution of higher education in the Commonwealth shall take all appropriate actions to meet the following financial and administrative management standards:

1. An unqualified opinion from the Auditor of Public Accounts upon the audit of the public institution's financial statements;

2. No significant audit deficiencies attested to by the Auditor of Public Accounts;

3. Substantial compliance with all financial reporting standards approved by the State Comptroller;

4. Substantial attainment of accounts receivable standards approved by the State Comptroller, including, but not limited to, any standards for outstanding receivables and bad debts;

5. Substantial attainment of accounts payable standards approved by the State Comptroller including, but not limited to, any standards for accounts payable past due; and

6. Such other financial and administrative management standards as the Governor may establish, or as may be included in the appropriation act currently in effect.

B. Any public institution of higher education that does not meet all of the financial management standards in subsection A, including any established by the Governor, and such other financial management standards as may be included in the appropriation act currently in effect as

determined in a written certification by the Auditor of Public Accounts pursuant to § 30-133.1 shall develop and implement a plan of corrective action for purposes of meeting such standards as soon as practicable. The Chairman of the Board of Visitors or other governing body of the public institution of higher education shall provide a copy of the written plan to the Auditor of Public Accounts and the Secretaries of Education, Finance, and Administration promptly upon completion of the development of the written plan.

C. In addition, any public institution of higher education that does not meet all administrative management standards specified by the Governor, and such standards currently in effect for such institutions as determined in a written certification by the Auditor of Public Accounts pursuant to § 30-133.1 shall develop and implement a plan of corrective action for purposes of meeting such standards as soon as practical. Copies of the corrective action plan shall be provided to the same persons included under subsection B upon completion of the development of the written plan.

2005, cc. 933, 945.

§ 2.2-5005. (Repealed effective October 1, 2016) Incentive performance benefits to certain public institutions of higher education

As used in this section, unless the context requires a different meaning:

"Fiscal year of implementation" means the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described under § 23-9.6:1.01 are effective, as provided in a general appropriation act.

Beginning with the fiscal year that immediately follows the fiscal year of implementation and for all fiscal years thereafter, each public institution of higher education that (i) has been certified during the fiscal year by the State Council of Higher Education of Virginia pursuant to § 23-9.6:1.01 as having met the institutional performance benchmarks for public institutions of higher education and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive the following financial benefits:

1. Interest on the tuition and fees and other nongeneral fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education, as provided in the appropriation act. Such interest shall be paid from the general fund and shall be an appropriate and equitable amount as determined and certified in writing by the Secretary of Finance to the Comptroller by the end of each fiscal year, or as soon thereafter as practicable;

2. Any unexpended appropriations of the public institution of higher education at the close of the fiscal year, which shall be reappropriated and allotted for expenditure by the institution in the immediately following fiscal year; and

3. A pro rata amount of the rebate due to the Commonwealth on credit card purchases of $5,000 or less made during the fiscal year. The amount to be paid to each institution shall equal a pro rata share based upon its total transactions of $5,000 or less using the credit card that is approved

for use by all state agencies as compared to all transactions of $5,000 or less using such card by all state agencies. The Comptroller shall determine the public institution's pro rata share and, as provided in the appropriation act, shall pay the institution by August 15, or as soon thereafter as practicable, of the fiscal year immediately following the year of certification.

The payment to an institution of its pro rata share under this subdivision shall also be applicable to other rebate or refund programs in effect that are similar to that of the credit card rebate program described in this subdivision. The Secretary of Finance shall identify such other rebate or refund programs and shall determine the pro rata share to be paid to the public institution of higher education.

4. A rebate of any transaction fees for the prior fiscal year paid for sole source procurements made by the institution in accordance with subsection E of § 2.2-4303, for using a vendor who is not registered with the Department of General Service's web-based electronic procurement program commonly known as "eVA", as provided in the appropriation act. Such rebate shall be certified by the Department of General Services and paid to each public institution by August 15, or as soon thereafter as practicable, of the fiscal year immediately following the year of certification.

2005, cc. 933, 945.

Chapter 51 - VIRGINIA INVESTMENT PARTNERSHIP ACT

§ 2.2-5100. Short title; definitions

A. This chapter shall be known and may be cited as the "Virginia Investment Partnership Act."

B. As used in this chapter, unless the context requires a different meaning:

"Average manufacturing wage" means that amount determined by the Virginia Employment Commission to be the average wage paid manufacturing workers in a locality or region of the Commonwealth.

"Average nonmanufacturing wage" means that amount determined by the Virginia Employment Commission to be the average wage paid nonmanufacturing workers in basic employment in a locality or region of the Commonwealth.

"Basic employment" means employment that brings new or additional income into Virginia and adds to the gross state product.

"Capital investment" means an investment in real property, personal property, or both, at a manufacturing or basic nonmanufacturing facility within the Commonwealth that is capitalized by the company and that increases the productivity of the manufacturing facility, results in the creation, development or utilization of a more advanced technology than is in use immediately prior to such investment, or both. In order to qualify as a capital investment, an investment in technology shall result in a measurable increase in capacity or productivity, a measurable decrease in the production of flawed product, or both. Expenditures for maintenance, replacement or repair of

existing machinery, tools and real property shall not constitute a capital investment; however, expenditures for the replacement of property shall not be ineligible for designation as a capital investment if such replacement results in a measurable increase in productivity.

"Eligible company" means, for companies located in a Metropolitan Statistical Area with a population of 300,000 or more in the most recently preceding decennial census, a Virginia employer that:

a. (i) creates or causes to be created at least 400 jobs with average salaries at least 50 percent greater than the Prevailing Average Wage or (ii) creates or causes to be created at least 300 jobs with average salaries at least 100 percent greater than the Prevailing Average Wage, and

b. makes a capital investment of at least $5 million or $6,500 per job, whichever is greater.

For all companies located elsewhere in Virginia, "eligible company" shall mean a Virginia employer that creates or causes to be created at least 200 jobs with average salaries at least 50 percent greater than the Prevailing Average Wage, and making a capital investment of at least $6,500 per job.

"Eligible manufacturer or research and development service" means an existing Virginia manufacturer or research and development service that makes a capital investment of at least $25 million that is announced on or after June 1, 1998, which investment does not result in any net reduction in employment within one year after the capital investment has been completed and verified. Any entity participating in any other production grant program in the Commonwealth shall not be an eligible manufacturer or research and development service.

"Eligible research and development service" means an existing Virginia research and development service that supports manufacturing and that makes a capital investment of at least $25 million, which investment does not result in any net reduction in employment within one year after the capital investment has been completed and verified. Any entity participating in any other production grant program in the Commonwealth shall not be eligible.

"Existing Virginia manufacturer" means a manufacturer that has a legal presence within the Commonwealth for at least three years prior to making the announcement of the capital investment that makes it an eligible manufacturer.

"Flawed product" means an irregular unit of goods that cannot be sold to an end user.

"Fund" means the Virginia Investment Partnership Grant Fund created pursuant to § 2.2-5104, comprised of (i) the Major Eligible Employer Grant subfund, (ii) the Investment Performance Grant subfund, and (iii) the Economic Development Incentive Grant subfund.

"Major eligible employer" means an existing Virginia manufacturer or any other nonmanufacturing basic employer that makes a capital investment of at least $100 million and creates at least 1,000 jobs, or corporate headquarters and other basic employers that make a capital investment of at

least $100 million and create at least 400 jobs paying at least twice the prevailing average wage for the area.

"Manufacturer" means a business firm owning or operating a manufacturing establishment as defined in the Standard Industrial Classification Manual issued by the U.S. Office of Management and Budget or the North American Industry Classification System Manual issued by the United States Census Bureau.

"Net present value of benefits to Virginia" means the present value of the amount by which (i) the anticipated additional state tax revenue expected to accrue to the Commonwealth as a result of the capital investment and jobs created, over a period following the completion of the capital investment not to exceed 20 years, exceeds (ii) the value of all incentives provided by the Commonwealth, including any grant under this article, for such capital investment during that period.

"New job" means employment of an indefinite duration at the eligible facility, created as the direct result of the capital investment, for which the standard fringe benefits are paid by the firm for the employee, requiring a minimum of either (i) 35 hours of an employee's time a week for the entire normal year of the firm's operations, which "normal year" must consist of at least 48 weeks or (ii) 1,680 hours per year. Seasonal or temporary positions, positions created when a job function is shifted from an existing location in the Commonwealth to the facility, and positions with contractors, suppliers, and similar multiplier or spin-off jobs shall not qualify as new jobs under this article.

"Partnership" means the Virginia Economic Development Partnership.

"Prevailing Average Wage" means that amount determined by the Virginia Employment Commission to be the average wage paid workers in the city or county of the Commonwealth where the eligible company is located.

"Productivity" means the number of hours of labor required to produce a unit of goods.

"Research and development service" means a business firm owning or operating an establishment engaged in conducting research and experimental development that supports manufacturing in the physical, engineering and life sciences as defined in the North American Industry Classification System Manual issued by the United States Census Bureau.

"Secretary" means the Secretary of Commerce and Trade.

1999, cc. 875, 961, §§ 2.1-548.43:1, 2.1-548.43:2; 2000, c. 571; 2001, c. 844; 2003, c. 17; 2005, c. 431; 2009, cc. 151, 174; 2012, cc. 196, 407.

§ 2.2-5101. Virginia Investment Performance Grants

A. Subject to the appropriation by the General Assembly of sufficient moneys to the Investment Performance Grant subfund, any eligible manufacturer or research and development service that is not eligible for a major eligible employer grant under § 2.2-5102 shall be eligible for an investment performance grant as provided in this section.

B. The Partnership shall establish an application process by which eligible manufacturers and research and development services may apply for a grant under this section. An application for a grant under this section shall not be approved until the Partnership has verified that the capital investment has been completed.

C. The amount of the investment performance grant that an eligible manufacturer or research and development service shall be eligible to receive under this section shall be determined by the Secretary, based on the recommendation of the Partnership, and contingent upon approval by the Governor. The determination of the appropriate amount of an investment performance grant shall be based on the application of guidelines that establish criteria for correlating the amount of a grant to the relative value to the Commonwealth of the eligible investment.

D. The Partnership shall assist the Secretary in developing objective guidelines that shall be used in awarding investment performance grants. No grant shall be awarded until the Secretary has provided copies of such guidelines for review to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance. The preparation of the guidelines shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act. The guidelines shall require determinations regarding the amount of investment performance grants to address:

1. The number of new jobs created by the capital investment;

2. The wages paid for the new jobs and the amount by which wages exceed the average manufacturing wage for the locality or region;

3. The extent to which the capital investment produces (i) measurable increases in capacity, productivity, or both; (ii) measurable decreases in the production of flawed product; or (iii) measurable advances in knowledge, research, or the application of research findings for the creation of new or significantly improved products or processes that support manufacturing;

4. The amount of the capital investment;

5. The net present value of benefits to Virginia;

6. The amount of other incentives offered by the Commonwealth and the locality; and

7. The importance of the manufacturing or research and development facility to the economy of the locality or region.

The guidelines shall also address the eligibility of manufacturers or research and development services that make a capital investment in phases over a period of years, and limits on eligibility for multiple grants by the same manufacturer or research and development service within stated periods of time.

E. The amount of an investment performance grant to any eligible manufacturer under this section shall not exceed $3 million or 10 percent of the amount appropriated by the General Assembly to

the Investment Performance Grant subfund in the year that the terms of a grant are determined. For all eligible projects awarded grants on or after July 1, 2005, and before July 1, 2009, the amount of an investment performance grant to any recipient under this section shall not exceed $1.5 million. For eligible projects awarded grants on or after July 1, 2009, the amount of an investment performance grant to any recipient under this section shall not exceed $3 million, except for eligible projects that demonstrate extraordinary characteristics described in guidelines implementing this chapter the amount of an investment performance grant to any such recipient under this section shall not exceed $5 million.

F. For all eligible projects awarded grants before July 1, 2005, the aggregate amount of investment performance grants approved under this section in any year shall not exceed $6 million, and the aggregate amount of grants outstanding to all eligible manufacturers under this section for all years shall at no time exceed $30 million. For all such grants awarded prior to that date, the annual obligations of the Commonwealth to make grant payments to individual eligible manufacturers under this section shall not exceed $600,000. For all eligible projects awarded grants on or after July 1, 2005, and before July 1, 2009, the aggregate amount of investment performance grants approved under this section in any year shall not exceed $3 million, and the aggregate amount of such grants awarded after that date and outstanding at any time shall not exceed $15 million. For all such grants awarded on or after that date, the annual obligations of the Commonwealth to make grant payments to individual recipients under this section shall not exceed $300,000. For all eligible projects awarded grants on or after July 1, 2009, and before July 1, 2015, the aggregate amount of investment performance grants approved under this section in any year shall not exceed $6 million, and the aggregate amount of such grants awarded on or after July 1, 2009, and before July 1, 2015, and outstanding at any time shall not exceed $30 million. For all such grants awarded on or after July 1, 2009, and before July 1, 2015, the annual obligations of the Commonwealth to make grant payments to individual recipients under this section shall not exceed $1 million. For all eligible projects awarded grants on or after July 1, 2015, the aggregate amount of investment performance grants approved under this section in any year shall not exceed $6 million, and the aggregate amount of such grants awarded on or after July 1, 2015, and outstanding at any time shall not exceed $20 million. For all such grants awarded on or after July 1, 2015, the annual obligations of the Commonwealth to make grant payments to individual recipients under this section shall not exceed $1 million.

G. Any eligible manufacturer or research and development service shall be eligible to receive a grant from the Fund in five equal installments beginning in the third year after the capital investment is completed and the Partnership has verified that the requirements applicable to such grant have been satisfied. Any eligible manufacturer or research and development service located in a fiscally distressed area of the State, as defined in the guidelines implementing this chapter, shall be eligible to begin receiving grants in the second year after the capital investment is completed and verified.

1999, cc. 875, 961, § 2.1-548.43:3; 2000, c. 571; 2001, c. 844; 2003, c. 17; 2005, c. 431; 2007, c. 384; 2009, cc. 267, 423; 2015, c. 761.

§ 2.2-5102. Performance grant for major eligible manufacturers

A. As used in this section, "major eligible employer" means any eligible manufacturer or other nonmanufacturing basic employer that makes a capital investment of at least $100 million that results in the creation of at least 1,000 new jobs. For corporate headquarters and other basic employers that make a capital investment of at least $100 million and create at least 400 new jobs paying at least twice the prevailing average wage for the area, the 1,000 job requirement may be reduced in proportion to the factor by which the wages for the new jobs exceed the prevailing average wage for the area. All other provisions of this chapter shall apply equally to major eligible manufacturers and major eligible nonmanufacturing basic employers, in this chapter collectively referred to as "major eligible employers."

B. Subject to the appropriation by the General Assembly of sufficient moneys to the Major Eligible Employer Grant subfund, any major eligible employer shall be eligible for a grant under this section of up to $25 million, to be payable from such subfund over a period of not less than five years and not more than seven years, commencing in the third year following the approval by the Secretary of the employer's grant application.

C. The Partnership shall establish an application process by which major eligible employers may apply for a grant under this section. An application for a grant under this section shall not be approved until the Partnership has verified that the capital investment has been completed.

D. The Comptroller shall not draw any warrants to issue checks for grants under this chapter without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the appropriation act. The payment of any grant under this section shall be in accordance with the terms and conditions set forth in a memorandum of understanding between a major eligible employer and the Commonwealth. These terms and conditions shall supplement the provisions of this chapter and shall include but not be limited to the terms of the payment of the grant. The payment of the grant shall be made in full or in proportion to a major eligible employer's fulfillment of the terms of the memorandum of understanding. The Secretary shall consult with the House Committee on Appropriations and the Senate Committee on Finance prior to entering into any memorandum of understanding. The House Committee on Appropriations and the Senate Committee on Finance shall have the opportunity to review any memorandum of understanding prior to its execution by the Commonwealth.

1999, cc. 875, 961, § 2.1-548.43:4; 2000, c. 571; 2001, c. 844; 2003, c. 17; 2015, c. 761.

§ 2.2-5102.1. Virginia Economic Development Incentive Grants

A. Subject to the appropriation by the General Assembly of sufficient moneys to the Economic Development Incentive Grant subfund, any eligible company that meets the requirements of this

section and is not awarded a grant under § 2.2-5101 or 2.2-5102 for the same project shall be eligible to apply for an economic development incentive grant as provided in this section.

B. The Partnership shall establish an application process by which eligible companies may apply for a grant under this section. An application for a grant under this section shall not be approved for payment until the Partnership has verified that the applicable requirements of the memorandum of agreement have been satisfied.

C. The amount of the economic development incentive grant that an eligible company may receive under this section shall be determined at the sole discretion of the Governor based on the recommendation of the Secretary. The determination of the appropriate amount for an economic development incentive grant shall be based on the application of guidelines that establish criteria for correlating the amount of a grant to the relative value to the Commonwealth of the new investment and employment.

D. The Partnership shall assist the Secretary in developing objective guidelines that shall be used in awarding economic development incentive grants. No grant shall be awarded until the Secretary has provided copies of such guidelines for review to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance. The preparation of the guidelines shall be exempt from the requirements of Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act (§ 2.2-4000 et seq.). The guidelines shall require determinations regarding the amount of investment performance grants to address:

1. The number of new jobs created by the capital investment;

2. The wages paid for the new jobs and the amount by which wages exceed the average wage for the locality or region;

3. The amount of the capital investment;

4. The net present value of benefits to Virginia;

5. The amount of other incentives offered by the Commonwealth and the locality; and

6. The importance of the facility to the economy of the locality or region.

The guidelines shall also address the eligibility of companies that make a capital investment in phases over a period of years, and limits on eligibility for multiple grants by the same company within stated periods of time.

E. For eligible projects awarded grants prior to July 1, 2010, the aggregate amount of economic development incentive grants payable under this section in any fiscal year shall not exceed $6 million, and the aggregate amount of such grants outstanding that were awarded prior to July 1, 2010, shall not exceed $30 million. For eligible projects awarded grants on or after July 1, 2010, the aggregate amount of economic development incentive grants payable under this section in any

fiscal year shall not exceed $6 million and the aggregate amount of such grants outstanding on or after July 1, 2010, shall not exceed $30 million.

F. Any eligible company shall be eligible to receive a grant from the Fund in no fewer than five installments beginning in the third year after the Partnership has verified that the requirements applicable to such grant have been satisfied. All such terms shall be negotiated and set forth in a memorandum of agreement.

G. The Comptroller shall not draw any warrants to issue checks for grants under this chapter without a specific legislative appropriation as specified in conditions and restrictions on expenditures in the appropriation act. The payment of any grant under this section shall be in accordance with the terms and conditions set forth in a memorandum of agreement between a major eligible employer and the Commonwealth. These terms and conditions shall supplement the provisions of this chapter and shall include but not be limited to the terms of the payment of the grant. The payment of the grant shall be made in full or in proportion to a major eligible employer's fulfillment of the terms of the memorandum of agreement.

2005, c. 431; 2007, c. 576; 2010, cc. 735, 768.

§ 2.2-5103. Requirements for grants generally

A. Any eligible manufacturer, eligible company, or research and development service eligible to apply for a grant under this chapter shall provide evidence, satisfactory to the Secretary, of the amount of the capital investment, the number of new jobs created as a result of the capital investment and such other evidence that requirements of this chapter have been satisfied. An eligible manufacturer, eligible company, or research and development service whose application has been approved shall continue to comply with the requirements for grant eligibility during the grant payment period. The Partnership shall verify that the conditions for approval of any grant have been satisfied. The Partnership may require that as a condition of receiving any grant or loan incentive that is based on employment goals, a recipient manufacturer, company, or research and development service must submit copies of employer quarterly payroll reports provided to the Virginia Employment Commission to verify the employment status of any position included in the employment goal.

B. Prior to any grant payment, the Partnership shall certify to (i) the Comptroller and (ii) each applicant the amount of the grant to which such applicant is entitled. Subject to the appropriation by the General Assembly of sufficient moneys to the appropriate subfund, payment of such grant shall be made from the subfund by check issued by the State Treasurer on warrant of the Comptroller within 60 days of certification.

C. As a condition of receipt of a grant, a major eligible employer or eligible company shall make available to the Partnership for inspection upon request all relevant and applicable documents to determine whether the requirements for the receipt of grants as set forth in this chapter have been

satisfied. All such documents appropriately identified by the major eligible employer or eligible company shall be considered confidential and proprietary.

D. Within 30 days of each calendar quarter, the Secretary shall provide a report to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance that shall include, but is not limited to, the following information: the name of the eligible manufacturer, eligible company, or research and development service determined to be eligible for a grant; the product it manufactures, the nature of the research, or the products it produces or services it provides, as applicable; the locality of the manufacturing, research and development, or other facility; the amount of the grant made or committed from the Fund; the number of new jobs created or projected to be created; the amount of the manufacturer's, eligible company's, or research and development service's capital investment; and the timetable for the completion of the capital investment and new jobs created or employment creation, as applicable.

E. The Secretary shall provide grants and commitments from the Fund in an amount not to exceed the dollar amount contained in the Fund. If funds are committed for years beyond the fiscal years covered under the existing appropriation act, the State Treasurer shall set aside and reserve such funds as have been committed, and such funds shall remain in the Fund for those future fiscal years. No grant shall be payable in the years beyond the existing appropriation act unless such funds are currently available in the Fund.

1999, cc. 875, 961, § 2.1-548.43:5; 2000, c. 571; 2001, c. 844; 2005, c. 431; 2013, c. 547.

§ 2.2-5104. Virginia Investment Partnership Grant Fund

A. There is established a special fund in the state treasury to be known as the Virginia Investment Partnership Grant Fund. The Fund shall consist of the Major Eligible Employer Grant subfund, the Economic Development Incentive Grant subfund, and the Investment Performance Grant subfund. Each subfund shall include such moneys as may be appropriated by the General Assembly and designated for the respective subfund, and a "sinking fund" including some proportion of the marginal revenues derived from eligible companies receiving grants under this Act. The Fund shall be used solely for the payment of investment incentive grants to eligible Virginia business entities pursuant to this chapter. The Partnership shall administer the Virginia Investment Partnership Grant Fund.

B. The Partnership shall allocate, from the appropriate subfund, moneys in the following order of priority: (i) first to unpaid grant amounts carried forward from prior years because eligible manufacturers did not receive the full amount of any grant to which they were eligible in a prior year and (ii) then to other approved applicants. If the moneys in the Fund are less than the amount of grants to which approved applicants in any class of priority are eligible, the moneys in the appropriate subfund shall be apportioned pro rata among eligible applicants in such class, based upon the amount of the grant to which an approved applicant is eligible and the amount of money in the subfund available for allocation to such class.

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

D. The Partnership shall determine the amount of the grants to be allocated to eligible applicants by June 30 of each year. The Partnership shall then certify to the Comptroller the amount of grant an eligible manufacturer shall receive. Payments shall be made by check issued by the State Treasurer on warrant of the Comptroller.

E. All excess funds remaining in any given year shall be carried forward on the books of the Fund for use in subsequent years.

F. Actions of the Partnership relating to the allocation and awarding of grants shall be exempt from the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) pursuant to subdivision B 4 of § 2.2-4002.

1999, cc. 875, 961, § 2.1-548.43:6; 2000, c. 571; 2001, c. 844; 2005, c. 431.

Chapter 52 - CHILDREN'S SERVICES ACT

§ 2.2-5200. Intent and purpose; definitions

A. It is the intention of this law to create a collaborative system of services and funding that is child-centered, family-focused and community-based when addressing the strengths and needs of troubled and at-risk youths and their families in the Commonwealth.

This law shall be interpreted and construed so as to effectuate the following purposes:

1. Ensure that services and funding are consistent with the Commonwealth's policies of preserving families and providing appropriate services in the least restrictive environment, while protecting the welfare of children and maintaining the safety of the public;

2. Identify and intervene early with young children and their families who are at risk of developing emotional or behavioral problems, or both, due to environmental, physical or psychological stress;

3. Design and provide services that are responsive to the unique and diverse strengths and needs of troubled youths and families;

4. Increase interagency collaboration and family involvement in service delivery and management;

5. Encourage a public and private partnership in the delivery of services to troubled and at-risk youths and their families; and

6. Provide communities flexibility in the use of funds and to authorize communities to make decisions and be accountable for providing services in concert with these purposes.

B. As used in this chapter, unless the context requires a different meaning:

"CSA" means the Children's Services Act.

"Council" means the State Executive Council for Children's Services created pursuant to § 2.2-2648.

1992, cc. 837, 880, § 2.1-745; 2001, c. 844; 2015, c. 366.

§ 2.2-5201. State and local advisory team; appointment; membership

The state and local advisory team is established to better serve the needs of troubled and at-risk youths and their families by advising the Council and by managing cooperative efforts at the state level and providing support to community efforts. The team shall be appointed by and be responsible to the Council. The team shall include one representative from each of the following state agencies: the Department of Health, the Department of Juvenile Justice, the Department of Social Services, the Department of Behavioral Health and Developmental Services, the Department of Medical Assistance Services, and the Department of Education. The team shall also include a parent representative who is not an employee of any public or private program that serves children and families and who has a child who has received services that are within the purview of the Children's Services Act; a representative of a private organization or association of providers for children's or family services; a local Children's Services Act coordinator or program manager; a juvenile and domestic relations district court judge; a representative who has previously received services through the Children's Services Act, appointed with recommendations from entities including the Departments of Education and Social Services and the Virginia Chapter of the National Alliance on Mental Illness; and one member from each of five different geographical areas of the Commonwealth who is representative of one of the different participants of community policy and management teams pursuant to § 2.2-5205. The nonstate agency members shall serve staggered terms of not more than three years, such terms to be determined by the Council.

The team shall annually elect a chairman from among the local government representatives who shall be responsible for convening the team. The team shall develop and adopt bylaws to govern its operations that shall be subject to approval by the Council. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in § 2.2-3117 of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

1992, cc. 837, 880, § 2.1-747; 2000, c. 937; 2001, c. 844; 2003, c. 499; 2004, c. 836; 2009, cc. 813, 840; 2015, cc. 366, 526; 2016, c. 443.

§ 2.2-5202. State and local advisory team; powers and duties

The state and local advisory team may:

1. Advise the Council on state interagency program policies that promote and support cooperation and collaboration in the provision of services to troubled and at-risk youths and their families at the state and local levels;

2. Advise the Council on state interagency fiscal policies that promote and support cooperation and collaboration in the provision of services to troubled and at-risk youths and their families at the state and local levels;

3. Advise state agencies and localities on training and technical assistance necessary for the provision of efficient and effective services that are responsive to the strengths and needs of troubled and at-risk youths and their families; and

4. Advise the Council on the effects of proposed policies, regulations and guidelines.

1992, cc. 837, 880, § 2.1-748; 2000, c. 937; 2001, c. 844; 2003, c. 483.

§ 2.2-5203. Duties of agencies represented on state and local advisory team

The state agencies represented on the state and local advisory team shall provide administrative support for the team in the development and implementation of the collaborative system of services and funding authorized by this chapter. This support shall also include, but not be limited to, the provision of timely fiscal information, data for client- and service-tracking, and assistance in training local agency personnel on the system of services and funding established by this chapter.

1992, cc. 837, 880, § 2.1-749; 2001, c. 844.

§ 2.2-5204. Community policy and management team; appointment; fiscal agent

Every county, city, or combination of counties, cities, or counties and cities shall establish a community policy and management team in order to receive funds pursuant to this chapter. Each such team shall be appointed by the governing body of the participating local political subdivision establishing the team. In making such appointments, the governing body shall ensure that the membership is appropriately balanced among the representatives required to serve on the team in accordance with § 2.2-5205. When any combination of counties, cities or counties and cities establishes a community policy and management team, the board of supervisors of each participating county or the council in the case of each participating city shall jointly establish the size of the team and the type of representatives to be selected from each locality in accordance with § 2.2-5205. The governing bodies of each participating county and city served by the team shall appoint the designated representatives from their localities. The participating governing bodies shall jointly designate an official of one member city or county to act as fiscal agent for the team.

The county or city that comprises a single team and the county or city whose designated official serves as the fiscal agent for the team in the case of joint teams shall annually audit the total revenues of the team and its programs. The county or city that comprises a single team and any combination of counties or cities establishing a team shall arrange for the provision of legal services to the team.

1992, cc. 837, 880, § 2.1-750; 2001, c. 844.

§ 2.2-5205. Community policy and management teams; membership; immunity from liability

The community policy and management team to be appointed by the local governing body shall include, at a minimum, at least one elected official or appointed official or his designee from the governing body of a locality that is a member of the team, and the local agency heads or their designees of the following community agencies: community services board established pursuant to § 37.2-501, juvenile court services unit, department of health, department of social services and the local school division. The team shall also include a representative of a private organization or association of providers for children's or family services if such organizations or associations are located within the locality, and a parent representative. Parent representatives who are employed by a public or private program that receives funds pursuant to this chapter or agencies represented on a community policy and management team may serve as a parent representative provided that they do not, as a part of their employment, interact directly on a regular and daily basis with children or supervise employees who interact directly on a daily basis with children. Notwithstanding this provision, foster parents may serve as parent representatives. Those persons appointed to represent community agencies shall be authorized to make policy and funding decisions for their agencies.

The local governing body may appoint other members to the team including, but not limited to, a local government official, a local law-enforcement official and representatives of other public agencies.

When any combination of counties, cities or counties, and cities establishes a community policy and management team, the membership requirements previously set out shall be adhered to by the team as a whole.

Persons who serve on the team shall be immune from any civil liability for decisions made about the appropriate services for a family or the proper placement or treatment of a child who comes before the team, unless it is proven that such person acted with malicious intent. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in § 2.2-3117 of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

Persons serving on the team who are parent representatives or who represent private organizations or associations of providers for children's or family services shall abstain from decision-making involving individual cases or agencies in which they have either a personal interest, as defined in § 2.2-3101 of the State and Local Government Conflict of Interests Act, or a fiduciary interest.

1992, cc. 837, 880, § 2.1-751; 1995, c. 190; 1999, cc. 644, 669; 2001, c. 844.

§ 2.2-5206. Community policy and management teams; powers and duties

The community policy and management team shall manage the cooperative effort in each community to better serve the needs of troubled and at-risk youths and their families and to maximize the use of state and community resources. Every such team shall:

1. Develop interagency policies and procedures to govern the provision of services to children and families in its community;

2. Develop interagency fiscal policies governing access to the state pool of funds by the eligible populations including immediate access to funds for emergency services and shelter care;

3. Establish policies to assess the ability of parents or legal guardians to contribute financially to the cost of services to be provided and, when not specifically prohibited by federal or state law or regulation, provide for appropriate parental or legal guardian financial contribution, utilizing a standard sliding fee scale based upon ability to pay;

4. Coordinate long-range, community-wide planning that ensures the development of resources and services needed by children and families in its community including consultation on the development of a community-based system of services established under § 16.1-309.3;

5. Establish policies governing referrals and reviews of children and families to the family assessment and planning teams or a collaborative, multidisciplinary team process approved by the Council, including a process for parents and persons who have primary physical custody of a child to refer children in their care to the teams, and a process to review the teams' recommendations and requests for funding;

6. Establish quality assurance and accountability procedures for program utilization and funds management;

7. Establish procedures for obtaining bids on the development of new services;

8. Manage funds in the interagency budget allocated to the community from the state pool of funds, the trust fund, and any other source;

9. Authorize and monitor the expenditure of funds by each family assessment and planning team or a collaborative, multidisciplinary team process approved by the Council;

10. Submit grant proposals that benefit its community to the state trust fund and enter into contracts for the provision or operation of services upon approval of the participating governing bodies;

11. Serve as its community's liaison to the Office of Children's Services, reporting on its programmatic and fiscal operations and on its recommendations for improving the service system, including consideration of realignment of geographical boundaries for providing human services;

12. Collect and provide uniform data to the Council as requested by the Office of Children's Services in accordance with subdivision D 16 of § 2.2-2648;

13. Review and analyze data in management reports provided by the Office of Children's Services in accordance with subdivision D 18 of § 2.2-2648 to help evaluate child and family outcomes and public and private provider performance in the provision of services to children and families through the Children's Services Act program. Every team shall also review local and statewide data provided in the management reports on the number of children served, children placed out of state, demographics, types of services provided, duration of services, service expenditures, child and family outcomes, and performance measures. Additionally, teams shall track the utilization and performance of residential placements using data and management reports to develop and implement strategies for returning children placed outside of the Commonwealth, preventing placements, and reducing lengths of stay in residential programs for children who can appropriately and effectively be served in their home, relative's homes, family-like setting, or their community;

14. Administer funds pursuant to § 16.1-309.3;

15. Have authority, upon approval of the participating governing bodies, to enter into a contract with another community policy and management team to purchase coordination services provided that funds described as the state pool of funds under § 2.2-5211 are not used;

16. Submit to the Department of Behavioral Health and Developmental Services information on children under the age of 14 and adolescents ages 14 through 17 for whom an admission to an acute care psychiatric or residential treatment facility licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2, exclusive of group homes, was sought but was unable to be obtained by the reporting entities. Such information shall be gathered from the family assessment and planning team or participating community agencies authorized in § 2.2-5207. Information to be submitted shall include:

a. The child or adolescent's date of birth;

b. Date admission was attempted; and

c. Reason the patient could not be admitted into the hospital or facility;

17. Establish policies for providing intensive care coordination services for children who are at risk of entering, or are placed in, residential care through the Children's Services Act program, consistent with guidelines developed pursuant to subdivision D 22 of § 2.2-2648; and

18. Establish policies and procedures for appeals by youth and their families of decisions made by local family assessment and planning teams regarding services to be provided to the youth and family pursuant to an individual family services plan developed by the local family assessment and planning team. Such policies and procedures shall not apply to appeals made pursuant to § 63.2-915 or in accordance with the Individuals with Disabilities Education Act or federal or state laws or regulations governing the provision of medical assistance pursuant to Title XIX of the Social Security Act.

1992, cc. 837, 880; 1995, cc. 396, 696, 699, § 2.1-752; 1997, c. 347; 1999, c. 669; 2000, c. 937; 2001, cc. 190, 206, 844; 2002, cc. 585, 619; 2003, c. 483; 2008, cc. 39, 170, 277; 2009, cc. 813, 840; 2014, c. 407; 2015, cc. 88, 305, 366.

§ 2.2-5207. Family assessment and planning team; membership; immunity from liability

Each community policy and management team shall establish and appoint one or more family assessment and planning teams as the needs of the community require. Each family assessment and planning team shall include representatives of the following community agencies who have authority to access services within their respective agencies: community services board established pursuant to § 37.2-501, juvenile court services unit, department of social services, and local school division. Each family and planning team also shall include a parent representative and may include a representative of the department of health at the request of the chair of the local community policy and management team. Parent representatives who are employed by a public or private program that receives funds pursuant to this chapter or agencies represented on a family assessment and planning team may serve as a parent representative provided that they do not, as a part of their employment, interact directly on a regular and daily basis with children or supervise employees who interact directly on a regular basis with children. Notwithstanding this provision, foster parents may serve as parent representatives. The family assessment and planning team may include a representative of a private organization or association of providers for children's or family services and of other public agencies.

Persons who serve on a family assessment and planning team shall be immune from any civil liability for decisions made about the appropriate services for a family or the proper placement or treatment of a child who comes before the team, unless it is proven that such person acted with malicious intent. Any person serving on such team who does not represent a public agency shall file a statement of economic interests as set out in § 2.2-3117 of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.). Persons representing public agencies shall file such statements if required to do so pursuant to the State and Local Government Conflict of Interests Act.

Persons serving on the team who are parent representatives or who represent private organizations or associations of providers for children's or family services shall abstain from decision-making involving individual cases or agencies in which they have either a personal interest, as defined in § 2.2-3101 of the State and Local Government Conflict of Interests Act, or a fiduciary interest.

1992, cc. 837, 880, § 2.1-753; 1995, c. 190; 1999, c. 644; 2001, c. 844; 2003, c. 483.

§ 2.2-5208. Family assessment and planning team; powers and duties

The family assessment and planning team, in accordance with § 2.2-2648, shall assess the strengths and needs of troubled youths and families who are approved for referral to the team and identify and determine the complement of services required to meet these unique needs.

Every such team, in accordance with policies developed by the community policy and management team, shall:

1. Review referrals of youths and families to the team;

2. Provide for family participation in all aspects of assessment, planning and implementation of services;

3. Provide for the participation of foster parents in the assessment, planning and implementation of services when a child has a program goal of permanent foster care or is in a long-term foster care placement. The case manager shall notify the foster parents of a troubled youth of the time and place of all assessment and planning meetings related to such youth. Such foster parents shall be given the opportunity to speak at the meeting or submit written testimony if the foster parents are unable to attend. The opinions of the foster parents shall be considered by the family assessment and planning team in its deliberations;

4. Develop an individual family services plan for youths and families reviewed by the team that provides for appropriate and cost-effective services;

5. Identify children who are at risk of entering, or are placed in, residential care through the Children's Services Act program who can be appropriately and effectively served in their homes, relatives' homes, family-like settings, and communities. For each child entering or in residential care, in accordance with the policies of the community policy and management team developed pursuant to subdivision 17 of § 2.2-5206, the family assessment and planning team or approved alternative multidisciplinary team, in collaboration with the family, shall (i) identify the strengths and needs of the child and his family through conducting or reviewing comprehensive assessments, including but not limited to information gathered through the mandatory uniform assessment instrument, (ii) identify specific services and supports necessary to meet the identified needs of the child and his family, building upon the identified strengths, (iii) implement a plan for returning the youth to his home, relative's home, family-like setting, or community at the earliest appropriate time that addresses his needs, including identification of public or private community-based services to support the youth and his family during transition to community-based care, and (iv) provide regular monitoring and utilization review of the services and residential placement for the child to determine whether the services and placement continue to provide the most appropriate and effective services for the child and his family;

6. Where parental or legal guardian financial contribution is not specifically prohibited by federal or state law or regulation, or has not been ordered by the court or by the Division of Child Support Enforcement, assess the ability of parents or legal guardians, utilizing a standard sliding fee scale, based upon ability to pay, to contribute financially to the cost of services to be provided and provide for appropriate financial contribution from parents or legal guardians in the individual family services plan;

7. Refer the youth and family to community agencies and resources in accordance with the individual family services plan;

8. Recommend to the community policy and management team expenditures from the local allocation of the state pool of funds; and

9. Designate a person who is responsible for monitoring and reporting, as appropriate, on the progress being made in fulfilling the individual family services plan developed for each youth and family, such reports to be made to the team or the responsible local agencies.

1992, cc. 837, 880, § 2.1-754; 1995, c. 396; 1999, c. 669; 2001, cc. 437, 844; 2008, cc. 39, 170; 2015, c. 366.

§ 2.2-5209. Referrals to family assessment and planning team or collaborative, multidisciplinary team process

The community policy and management team shall establish policies governing the referral of troubled youths and families to the family assessment and planning team or a collaborative, multidisciplinary team process approved by the Council. These policies shall include that all youth and families for which CSA-funded treatment services are requested are to be assessed by the family assessment and planning team or an approved collaborative, multidisciplinary team process and shall consider the criteria set out in subdivisions A 1 and A 2 of § 2.2-5212. Except for cases involving only the payment of foster care maintenance that shall be at the discretion of the local community policy and management team, cases for which service plans are developed outside of this family assessment and planning team process or approved collaborative, multidisciplinary team process shall not be eligible for state pool funds.

Nothing in this section shall prohibit the use of state pool funds for emergency placements, provided the youth are subsequently assessed by the family assessment and planning team or an approved collaborative, multidisciplinary team process within 14 days of admission and the emergency placement is approved at the time of placement. In cases involving the denial of state pool funds resulting from parental refusal to consent to release of student records under federal law, where such refusal precludes the development of placement through the family assessment and planning team process or the approved collaborative, multidisciplinary team process, an appeal for good cause may be made to the Council.

1992, cc. 837, 880, § 2.1-755; 1999, c. 669; 2001, c. 844; 2003, c. 483.

§ 2.2-5210. Information sharing; confidentiality

All public agencies that have served a family or treated a child referred to a family assessment and planning team shall cooperate with this team. The agency that refers a youth and family to the team shall be responsible for obtaining the consent required to share agency client information with the team. After obtaining the proper consent, all agencies shall promptly deliver, upon request and without charge, such records of services, treatment or education of the family or child as are necessary for a full and informed assessment by the team.

Proceedings held to consider the appropriate provision of services and funding for a particular child or family or both who have been referred to the family assessment and planning team and whose case is being assessed by this team or reviewed by the community policy and management team shall be confidential and not open to the public, unless the child and family who are the subjects of the proceeding request, in writing, that it be open. All information about specific children and families obtained by the team members in the discharge of their responsibilities to the team shall be confidential.

Utilizing a secure electronic database, the CPMT and the family assessment and planning team shall provide the Office of Children's Services with client-specific information from the mandatory uniform assessment and information in accordance with subdivision D 11 of § 2.2-2648.

1992, cc. 837, 880, § 2.1-756; 2001, c. 844; 2008, c. 277; 2015, cc. 357, 366.

§ 2.2-5211. State pool of funds for community policy and management teams

A. There is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriation act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families.

The purposes of this system of funding are to:

1. Place authority for making program and funding decisions at the community level;

2. Consolidate categorical agency funding and institute community responsibility for the provision of services;

3. Provide greater flexibility in the use of funds to purchase services based on the strengths and needs of children, youths, and families; and

4. Reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children and youth according to differing required local match rates for funding streams.

B. The state pool shall consist of funds that serve the target populations identified in subdivisions 1 through 5 of this subsection in the purchase of residential and nonresidential services for children and youth. References to funding sources and current placement authority for the targeted populations of children and youth are for the purpose of accounting for the funds in the pool. It is not intended that children and youth be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children and youth placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;

2. Children and youth with disabilities placed by local social services agencies or the Department of Juvenile Justice in private residential facilities or across jurisdictional lines in private, special

education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;

3. Children and youth for whom foster care services, as defined by § 63.2-905, are being provided;

4. Children and youth placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program, or in a community or facility-based treatment program in accordance with the provisions of subsections B or C of § 16.1-284.1; and

5. Children and youth committed to the Department of Juvenile Justice and placed by it in a private home or in a public or private facility in accordance with § 66-14.

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient to (i) provide special education services and foster care services for children and youth identified in subdivisions B 1, B 2, and B 3 and (ii) meet relevant federal mandates for the provision of these services. The community policy and management team shall anticipate to the best of its ability the number of children and youth for whom such services will be required and reserve funds from its state pool allocation to meet these needs. Nothing in this section prohibits local governments from requiring parental or legal financial contributions, where not specifically prohibited by federal or state law or regulation, utilizing a standard sliding fee scale based upon ability to pay, as provided in the appropriation act.

D. When a community services board established pursuant to § 37.2-501, local school division, local social service agency, court service unit, or the Department of Juvenile Justice has referred a child and family to a family assessment and planning team and that team has recommended the proper level of treatment and services needed by that child and family and has determined the child's eligibility for funding for services through the state pool of funds, then the community services board, the local school division, local social services agency, court service unit or Department of Juvenile Justice has met its fiscal responsibility for that child for the services funded through the pool. However, the community services board, the local school division, local social services agency, court service unit or Department of Juvenile Justice shall continue to be responsible for providing services identified in individual family service plans that are within the agency's scope of responsibility and that are funded separately from the state pool.

Further, in any instance that an individual 18 through 21 years of age, inclusive, who is eligible for funding from the state pool and is properly defined as a school-aged child with disabilities pursuant to § 22.1-213 is placed by a local social services agency that has custody across jurisdictional lines in a group home in the Commonwealth and the individual's individualized education program (IEP), as prepared by the placing jurisdiction, indicates that a private day school placement is the appropriate educational program for such individual, the financial and legal responsibility for

the individual's special education services and IEP shall remain, in compliance with the provisions of federal law, Article 2 (§ 22.1-213) of Chapter 13 of Title 22.1, and Board of Education regulations, the responsibility of the placing jurisdiction until the individual reaches the age of 21, inclusive, or is no longer eligible for special education services. The financial and legal responsibility for such special education services shall remain with the placing jurisdiction, unless the placing jurisdiction has transitioned all appropriate services with the individual.

E. In any matter properly before a court for which state pool funds are to be accessed, the court shall, prior to final disposition, and pursuant to §§ 2.2-5209 and 2.2-5212, refer the matter to the community policy and management team for assessment by a local family assessment and planning team authorized by policies of the community policy and management team for assessment to determine the recommended level of treatment and services needed by the child and family. The family assessment and planning team making the assessment shall make a report of the case or forward a copy of the individual family services plan to the court within 30 days of the court's written referral to the community policy and management team. The court shall consider the recommendations of the family assessment and planning team and the community policy and management team. If, prior to a final disposition by the court, the court is requested to consider a level of service not identified or recommended in the report submitted by the family assessment and planning team, the court shall request the community policy and management team to submit a second report characterizing comparable levels of service to the requested level of service. Notwithstanding the provisions of this subsection, the court may make any disposition as is authorized or required by law. Services ordered pursuant to a disposition rendered by the court pursuant to this section shall qualify for funding as appropriated under this section.

1992, cc. 837, 880, § 2.1-757; 1993, c. 567; 1994, cc. 854, 865; 1998, c. 534; 1999, c. 669; 2000, c. 914; 2001, c. 844; 2004, cc. 286, 631; 2009, c. 304; 2013, c. 5.

§ 2.2-5211.1. Certain restrictions on reimbursement and placements of children in residential facilities

Notwithstanding any provision of this chapter to the contrary or any practice or previous decision-making process of the state executive council, Office of Children's Services, state and local advisory team, any community policy and management team, any family assessment and planning team or any other local entity placing children through the Children's Services Act (CSA), the following restrictions shall control:

1. In the event that any group home or other residential facility in which CSA children reside has its licensure status lowered to provisional as a result of multiple health and safety or human rights violations, all children placed through CSA in such facility shall be assessed as to whether it is in the best interests of each child placed to be removed from the facility and placed in a fully licensed facility and no additional CSA placements shall be made in the provisionally licensed facility until and unless the violations and deficiencies relating to health and safety or human

rights that caused the designation as provisional shall be completely remedied and full licensure status restored.

2. Prior to the placement of a child across jurisdictional lines, the family assessment and planning teams shall (i) explore all appropriate community services for the child, (ii) document that no appropriate placement is available in the locality, and (iii) report the rationale for the placement decision to the community policy and management team. The community policy and management team shall report annually to the Office of Children's Services on the gaps in the services needed to keep children in the local community and any barriers to the development of those services.

3. Community policy and management teams, family assessment and planning teams or other local entities responsible for CSA placements shall notify the receiving school division whenever a child is placed across jurisdictional lines and identify any children with disabilities and foster care children to facilitate compliance with expedited enrollment and special education requirements.

2006, c. 781; 2015, c. 366.

§ 2.2-5212. Eligibility for state pool of funds

A. In order to be eligible for funding for services through the state pool of funds, a youth, or family with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 and shall be determined through the use of a uniform assessment instrument and process and by policies of the community policy and management team to have access to these funds.

1. The child or youth has emotional or behavior problems that:

a. Have persisted over a significant period of time or, though only in evidence for a short period of time, are of such a critical nature that intervention is warranted;

b. Are significantly disabling and are present in several community settings, such as at home, in school or with peers; and

c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal agency services or routine collaborative processes across agencies, or require coordinated interventions by at least two agencies.

2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at imminent risk of entering, purchased residential care. In addition, the child or youth requires services or resources that are beyond normal agency services or routine collaborative processes across agencies, and requires coordinated services by at least two agencies.

3. The child or youth requires placement for purposes of special education in approved private school educational programs.

4. The child or youth requires foster care services as defined in § 63.2-905.

B. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a person younger than 18 years of age or (ii) any individual through 21 years of age who is otherwise

eligible for mandated services of the participating state agencies including special education and foster care services.

1992, cc. 837, 880, § 2.1-758; 1994, c. 865; 1999, c. 669; 2001, c. 844; 2013, c. 5.

§ 2.2-5213. State trust fund

A. There is established a state trust fund with funds appropriated by the General Assembly. The purposes of this fund are to develop:

1. Early intervention services for young children and their families, which are defined to include: prevention efforts for individuals who are at-risk for developing problems based on biological, psychological or social/environmental factors.

2. Community services for troubled youths who have emotional or behavior problems, or both, and who can appropriately and effectively be served in the home or community, or both, and their families.

The fund shall consist of moneys from the state general fund, federal grants, and private foundations.

B. Proposals for requesting these funds shall be made by community policy and management teams to the Office of Children's Services. The Office of Children's Services shall make recommendations on the proposals it receives to the Council, which shall award the grants to the community teams in accordance with the policies developed under the authority of § 2.2-5202.

1992, cc. 837, 880, § 2.1-759; 1995, c. 520; 2000, c. 937; 2001, c. 844; 2015, c. 366.

§ 2.2-5214. Rates for purchase of services; service fee directory

The rates paid for services purchased pursuant to this chapter shall be determined by competition of the market place and by a process sufficiently flexible to ensure that family assessment and planning teams and providers can meet the needs of individual children and families referred to them. To ensure that family assessment and planning teams are informed about the availability of programs and the rates charged for such programs, the Council shall oversee the development of and approve a service fee directory that shall list the services offered and the rates charged by any entity, public or private, which offers specialized services for at-risk youth or families. The Council shall designate the Office of Children's Services to coordinate the establishment, maintenance and other activities regarding the service fee directory.

1993, c. 110, § 2.1-759.1; 2000, c. 937; 2001, c. 844; 2015, c. 366.

Chapter 53 - EARLY INTERVENTION SERVICES SYSTEM

§ 2.2-5300. Definitions

As used in this chapter, unless the context requires a different meaning:

"Council" means the Virginia Interagency Coordinating Council created pursuant to § 2.2-2664.

"Early intervention services" means services provided through Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.), as amended, designed to meet the developmental needs of each child and the needs of the family related to enhancing the child's development and provided to children from birth to age three who have (i) a 25 percent developmental delay in one or more areas of development, (ii) atypical development, or (iii) a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay. Early intervention services provided in the child's home and in accordance with this chapter shall not be construed to be home health services as referenced in § 32.1-162.7.

"Participating agencies" means the Departments of Health, of Education, of Medical Assistance Services, of Behavioral Health and Developmental Services, and of Social Services; the Departments for the Deaf and Hard-of-Hearing and for the Blind and Vision Impaired; and the Bureau of Insurance within the State Corporation Commission.

1992, c. 771, § 2.1-760; 1999, cc. 640, 684; 2001, c. 844; 2005, c. 695; 2009, cc. 813, 840; 2013, c. 571.

§ 2.2-5301. Secretaries of Health and Human Resources and Education to work together

The Secretaries of Health and Human Resources and Education shall work together in:

1. Promoting interagency consensus and facilitating complementary agency positions on issues relating to early intervention services;

2. Examining and evaluating the effectiveness of state agency programs, services, and plans for early intervention services and identifying duplications, inefficiencies, and unmet needs;

3. Analyzing state agency budget requests and any other budget items affecting early intervention services;

4. Proposing ways of realigning funding to promote interagency initiatives and programs for early intervention services;

5. Formulating recommendations on planning, priorities, and expenditures for early intervention services and communicating the recommendations to the Governor and state agency heads;

6. Formulating joint policy positions and statements on legislative issues regarding early intervention services and communicating those positions and statements to the General Assembly; and

7. Resolving interagency disputes and assigning financial responsibility in accordance with Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.).

1992, c. 771, § 2.1-761; 2001, c. 844.

§ 2.2-5302. Repealed

Repealed by Acts 2004, c. 38.

§ 2.2-5303. Duties of participating agencies

The duties of the participating agencies shall include:

1. Establishing a statewide system of early intervention services in accordance with state and federal statutes and regulations;

2. Identifying and maximizing coordination of all available public and private resources for early intervention services;

3. Developing and implementing formal state interagency agreements that define the financial responsibility and service obligations of each participating agency for early intervention services, establish procedures for resolving disputes, and address any additional matters necessary to ensure collaboration;

4. Consulting with the lead agency in the promulgation of regulations to implement the early intervention services system, including developing definitions of eligibility and services;

5. Carrying out decisions resulting from the dispute resolution process;

6. Providing assistance to localities in the implementation of a comprehensive early intervention services system in accordance with state and federal statutes and regulations; and

7. Requesting and reviewing data and reports on the implementation of early intervention services from counterpart local agencies.

1992, c. 771, § 2.1-763; 2001, c. 844.

§ 2.2-5304. State lead agency's duties

To facilitate the implementation of an early intervention services system and to ensure compliance with federal requirements, the Governor shall appoint a lead agency. The duties of the lead agency shall include:

1. Promulgating regulations and adopting the policies and procedures as necessary to implement an early intervention services system and assure consistent and equitable access to such services, including, but not limited to, uniform statewide procedures on or before January 1, 2002, for public and private providers to determine parental liability and to charge fees for early intervention services in accordance with federal law and regulations, in consultation with other participating agencies; the regulations shall be adopted in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.);

2. Contracting with local lead agencies for implementation of local early intervention systems statewide;

3. Providing technical assistance to local early intervention systems, including local lead agencies, local interagency coordinating councils, and early intervention service providers; and

4. Establishing an interagency system of monitoring and supervising the early intervention services system.

1992, c. 771, § 2.1-764; 2001, cc. 562, 844; 2005, c. 695.

§ 2.2-5304.1. Local lead agencies

A. To facilitate implementation of local early intervention systems statewide, the state lead agency shall contract with local lead agencies selected by the local interagency coordinating council. If the local interagency coordinating council is unable to select a local lead agency, the state lead agency shall assist in making the determination.

B. The local lead agency shall have the power and duty to:

1. Establish and administer a local system of early intervention services in compliance with Part C of the Individuals With Disabilities Education Act (20 U.S.C. § 1431 et seq.) and all relevant state policies and procedures;

2. Implement consistent and uniform policies and procedures for public and private providers to determine parental liability and to charge fees for early intervention services pursuant to regulations, policies, and procedures adopted by the state lead agency in § 2.2-5304; and

3. Manage relevant state and federal early intervention funds allocated from the state lead agency for the local early intervention system, including contracting or otherwise arranging for services with local early intervention services providers.

C. Localities shall not be mandated to provide funding for any costs under this chapter, either directly or through participating local public agencies.

2005, c. 695.

§ 2.2-5305. Local interagency coordinating councils

A. The lead agency, in consultation with the Virginia Interagency Coordinating Council, shall establish local interagency coordinating councils on a statewide basis to advise and assist the local lead agencies and to enable early intervention service providers to establish working relationships that will increase the efficiency and effectiveness of early intervention services. The membership of local interagency coordinating councils shall include designees from the following agencies: community services boards, departments of health, departments of social services, and local school divisions. These designees shall designate additional council members as follows: at least one parent representative who is not an employee of any public or private program that serves infants and toddlers with disabilities; representatives from community providers of early intervention services; and representatives from other service providers as deemed appropriate. Every county and city may appoint a representative to the respective local interagency coordinating council.

B. The duties of local interagency coordinating councils shall include assisting and advising the local lead agency in the following:

1. Identifying existing early intervention services and resources;

2. Identifying gaps in the service delivery system and developing strategies to address these gaps;

3. Identifying alternative funding sources;

4. Facilitating the development of interagency agreements and supporting the development of service coalitions;

5. Implementing policies and procedures that will promote interagency collaboration; and

6. Developing local procedures and determining mechanisms for implementing policies and procedures in accordance with state and federal statutes and regulations.

1992, c. 771, § 2.1-766; 2001, cc. 562, 844; 2005, c. 695.

§ 2.2-5306. Duties of local public agencies

Local public agencies represented on local interagency coordinating councils are responsible for:

1. Providing services as appropriate and agreed upon by members of the local interagency coordinating council;

2. Maintaining data and providing information as requested to their respective state agencies;

3. Developing and implementing interagency agreements;

4. Complying with applicable state and federal regulations and local policies and procedures; and

5. Following procedural safeguards and dispute resolution procedures as adopted by the Commonwealth.

1992, c. 771, § 2.1-767; 2001, c. 844.

§ 2.2-5307. Existing funding levels

Any federal funds made available through Part C of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.) and any state funds appropriated specifically for Part H services shall supplement overall funding for services currently provided under Part of the Individuals with Disabilities Education Act (20 U.S.C. § 1431 et seq.).

1992, c. 771, § 2.1-768; 2001, c. 844.

§ 2.2-5308. Licensure as home care organization not required

Notwithstanding the provisions of § 32.1-162.9, no person who provides early intervention services in accordance with this chapter shall be required to be licensed as a home care organization in order to provide these services in a child's home.

1999, cc. 640, 684, § 2.1-768.1; 2001, c. 844.

Chapter 54 - COMMUNITY ACTION ACT

§ 2.2-5400. Short title; definitions

A. This chapter shall be known as the Community Action Act.

B. As used in this chapter, unless the context requires a different meaning:

"Community action agency" means a local subdivision of the Commonwealth, a combination of political subdivisions, a separate public agency or a private nonprofit agency that has the authority

under its applicable charter or laws to receive funds to support community action activities and other appropriate measures designed to identify and deal with the causes of poverty in the Commonwealth, and that is designated as a community action agency by federal law, federal regulations or the Governor.

"Community action program budget" means state funds, federal block grants and federal categorical grants that are received by the Commonwealth for community action activities.

"Community action statewide organization" means community action programs, organized on a statewide basis, to enhance the capability of community action agencies.

"Designated agency" means the agency designated by the Secretary of Health and Human Resources pursuant to § 2.2-5401.

"Local share" means cash or in-kind goods and services donated to community action agencies to carry out their responsibilities.

"Low-income person" means a person who is a member of a household with a gross annual income equal to or less than 125 percent of the poverty standard accepted by the federal agency designated to establish poverty guidelines.

"Service area" means the geographical area within the jurisdiction of a community action agency or a community action statewide organization.

1982, c. 667, §§ 2.1-587, 2.1-588; 2001, c. 844.

§ 2.2-5401. Designation by Secretary of Health and Human Resources of agency to administer act

The Secretary of Health and Human Resources shall designate an agency to administer the Community Action Act and to work with community action agencies and community action statewide organizations to develop social and economic opportunities for low-income persons.

1982, c. 667, § 2.1-589; 2001, c. 844.

§ 2.2-5402. Powers and duties of designated agency

The designated agency shall have the following powers and duties to:

1. Coordinate state activities designed to reduce poverty.

2. Cooperate with agencies of the Commonwealth and the federal government in reducing poverty and implementing community, social and economic programs.

3. Receive and expend funds for any purpose authorized by this chapter.

4. Enter into contracts with and to award grants to public and private nonprofit agencies and organizations.

5. Develop a state plan based on needs identified by community action agencies and community action statewide organizations.

6. Fund community action agencies and community action statewide organizations and to adopt regulations.

7. Provide assistance to local governments or private organizations for the purpose of establishing and operating a community action agency.

8. Provide technical assistance to community action agencies to improve program planning, program development, administration and the mobilization of public and private resources.

9. Require community action agencies and community action statewide organizations to generate local contributions of cash or in-kind services as the agency may establish by regulation.

10. Convene public meetings that provide citizens the opportunity to comment on public policies and programs to reduce poverty.

11. Advise the Governor and the General Assembly of the nature and extent of poverty in the Commonwealth and to make recommendations concerning changes in state and federal policies and programs.

1982, c. 667, § 2.1-590; 2001, c. 844.

§ 2.2-5403. Community action boards

A. Each community action agency shall administer its community action program through a community action board consisting of no less than fifteen members who shall be selected as follows:

1. One-third of the members of the board shall be elected public officials or their designees, who shall be selected by the local governing body of the service area, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointed public officials may be counted in meeting the one-third requirement.

2. At least one-third of the members shall be persons chosen democratically to represent the poor of the area served.

3. The other members shall be members of business, industry, labor, religious, social service, education or other major community groups.

B. Each member of the board selected to represent a specific geographic area within a community shall reside in the area represented.

C. Except as otherwise provided in subsection D, the board shall be responsible for the following:

1. Appointing and dismissing an executive director of the community action agency.

2. Approving grants and contracts, annual program budget requests and operational policies of the community action agency.

3. Having an annual audit performed by an independent auditor.

4. Convening public meetings to provide low-income and other persons the opportunity to comment upon public policies and programs to reduce poverty.

5. Annually evaluating the policies and programs of the community action agency. The board shall submit the evaluation and recommendations to improve the administration of the community action agency to the designated agency and to the local governing body or bodies within the service area.

6. Carrying out such other duties as may be delegated by the local governing body or bodies within the service area or by the designated agency.

7. Delegating responsibilities pursuant to the provisions of § 2.2-5404.

D. Where a local subdivision of the Commonwealth acts as or has designated a community action agency, the local governing body shall determine the responsibilities and authority of the community action board.

1982, c. 667, § 2.1-591; 1989, c. 273; 2001, c. 844; 2010, c. 584.

§ 2.2-5404. Delegation of responsibilities by community action agency

If a community action agency places responsibility for major policy determination with respect to the character, funding, extent and administration of and budgeting for programs to be carried on in a particular geographic area within the community in a subsidiary board, council or similar agency, the board, council or agency shall be broadly representative of the area.

1982, c. 667, § 2.1-592; 2001, c. 844.

§ 2.2-5405. Local participation

Each community action agency shall consult neighborhood-based organizations composed of residents of the area it serves or members of the groups to be served to assist the agency in planning, conducting and evaluating components of the community action agency.

1982, c. 667, § 2.1-593; 2001, c. 844.

§ 2.2-5406. Community action statewide organizations; structure; responsibilities

A. A community action statewide organization shall be a nonprofit corporation whose charter, articles of incorporation and bylaws permit the corporation to operate in all jurisdictions of the Commonwealth.

B. A community action statewide organization shall be governed by a board. The board shall conform to requirements for the community action agency board.

C. Community action statewide organizations shall carry out all the planning, reporting, evaluation, fiscal and programmatic responsibilities required by the designated agency and other appropriate agencies of state government.

D. Community action statewide organizations shall receive and administer state, federal and private funds, render technical assistance and carry out activities that will enable community action agencies to solve local problems.

E. Community action statewide organizations shall work with community action agencies in areas served by those agencies and with community-based organizations, local governments, industry and other organizations in areas unserved by a community action agency to assist in carrying out the purposes of this chapter.

1982, c. 667, §§ 2.1-594, 2.1-595, 2.1-596; 1989, c. 273; 2001, c. 844.

§ 2.2-5407. Designation of community action agencies; rescission of designation

A. Each community action agency that has been designated by a unit of local government and funded pursuant to the Economic Opportunity Act of 1964 (Public Law 88-452) that was in operation on July 1, 1982, and is still in operation shall be deemed a community action agency for the purposes of this chapter.

B. No new community action agency shall be designated in any area of the Commonwealth that is served by an existing community action agency.

C. The Governor may designate a community action agency to serve any locality not currently served by an existing community action agency. This determination may be through the expansion of the service area of an existing community action agency or the designation of a new community action agency.

The designated agency shall receive and review requests for the expansion of existing community action agencies or the designation of new community action agencies and shall present to the Secretary of Health and Human Resources a recommendation for community action status and funding. The review and recommendation shall be in compliance with regulations developed by the board of the designated agency.

Upon completion of a satisfactory review of the request, the Secretary shall forward a recommendation to the Governor.

D. The Secretary of Human Resources may recommend that the Governor rescind the designation of a community action agency for cause or by mutual agreement.

If the rescission is for cause, the Secretary shall:

1. Receive from the designated agency a request to rescind the designation of the community action agency, including the causes for the request;

2. Notify the chief elected official of each local governing body in the service area of the intent to rescind the designation of the community action agency;

3. Provide the community action agency the opportunity for a hearing on the record; and

4. Meet any other provisions required by federal law.

If the rescission is by mutual agreement, the Secretary shall:

1. Receive from the designated agency a resolution, approved by the governing body of the community action agency, requesting the Governor to rescind its designation as a community action agency. The resolution shall include a proposed effective date for the rescission; and

2. Meet any other provisions required by federal law.

1982, c. 667, § 2.1-597; 2001, c. 844; 2007, c. 522.

§ 2.2-5408. Administration of community action budget

The designated agency shall adopt regulations detailing the formula for the distribution of community action program budget funds. The regulations shall take into consideration the distribution of low-income persons residing in the service areas of the community action agencies, the relative cost of living of the areas, as well as other factors considered appropriate.

Each community action agency and community action statewide organization annually shall develop and submit a program budget request for funds appropriated from the community action program budget. The designated agency shall publish annually guidelines detailing the nature and extent of information required in the program budget request for the succeeding fiscal year.

In order to carry out its overall responsibility for planning, coordinating, evaluating and administering a community action program, a community action agency may under its charter or applicable laws receive and administer funds pursuant to this chapter. The community action agency may receive and administer funds and contributions from private or public sources that may be used in support of a community action agency or program and funds under any federal or state assistance program pursuant to which a public or private nonprofit agency organized in accordance with this chapter could act as grantee, contractor or sponsor of projects appropriate for inclusion in a community action program. A community action agency or community action statewide organization may transfer funds so received between components and to delegate funds to other agencies subject to the powers of its governing board and its overall program responsibilities.

In accordance with the requirements of the federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), the designated agency in cooperation with community action agencies and community action statewide organizations, shall develop a state plan for submission annually by the Governor to the Secretary of Health and Human Services.

Community action agencies and community action statewide organizations shall provide the designated agency with quarterly financial and program reports.

Funds received in the Community Services Block Grant pursuant to the federal Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35) shall be expended in support of the purposes of this chapter as follows:

1. Ninety percent of the funds received in the Community Services Block Grant shall be used for the development and implementation of programs and projects designed by community action

agencies to serve poor or low-income areas of the Commonwealth in accordance with a formula approved by the Governor for the first year of the Community Services Block Grant and thereafter biennially by the General Assembly.

2. No more than five percent of the funds received in the Community Services Block Grant shall be used for administration of the duties required by this chapter of the designated agency.

3. At least five percent of the funds received in the Community Services Block Grant shall be used to support community action activities conducted by community action statewide organizations.

1982, c. 667, § 2.1-598; 2001, c. 844.

Chapter 55 - VIRGINIA BIOTECHNOLOGY RESEARCH ACT

§ 2.2-5500. Purpose [Not set out]
Not set out. (2001, c. 844.)

§ 2.2-5501. Definitions
As used in this chapter, unless the context requires a different meaning:

"Affected localities" means the locality in which a regulated introduction is proposed to be made and any locality within a three-mile radius of the location where the regulated introduction is proposed to be made.

"Confidential business information" means information entitled to confidential treatment under subdivision A 1 or A 2 of § 2.2-5506.

"Coordinated Framework" means the federal Coordinated Framework for the Regulation of Biotechnology set forth in 51 Fed. Reg. 23,302 through 23,350 (June 26, 1986), as amended.

"Department" means the department designated by the Secretary of Commerce and Trade to implement the requirements of this chapter for certain types or classes of regulated introductions. Where possible, the Secretary shall designate the department whose purpose most closely resembles the purpose of the federal regulator that will be responsible under the Coordinated Framework for reviewing and authorizing the regulated introduction.

"Federal regulator" means a federal department, agency, or other instrumentality of the federal government, or a designee of such federal instrumentality, which is responsible for regulating an introduction of a genetically engineered organism into the environment under the Coordinated Framework.

"Genetically engineered organism" means an organism (any organism such as animal, plant, bacterium, cyanobacterium, fungus, protist, or virus), altered or produced through genetic modification from a donor, vector, or recipient organism using modern molecular techniques such as recombinant deoxyribonucleic acid (DNA) methodology, and any living organisms derived therefrom.

"Locality" means any county, city or town located within the Commonwealth.

"Planned introduction into the environment" means the intentional introduction or use in the Commonwealth beyond the de minimis level of a genetically engineered organism anywhere except within an indoor facility that is designed to physically contain the genetically engineered organism, including a laboratory, greenhouse, building, structure, growth chamber, or fermenter.

"Regulated introduction" means a planned introduction into the environment for which the Coordinated Framework requires that the person proposing to commence the introduction into the environment do one or more of the following:

1. Notify a federal regulator of the proposed introduction into the environment;

2. Secure the approval of or a permit or license from a federal regulator before commencing the introduction into the environment; or

3. Secure a determination by a federal regulator of the need for notification, approval, licensing or issuance of a permit by the federal regulator if the determination is part of a procedure specified in the Coordinated Framework.

1994, c. 472, § 2.1-770; 2001, c. 844.

§ 2.2-5502. Exemptions from chapter to be determined by Department

A. The Department may waive part or all of the requirements under this chapter for a specified regulated introduction if the Department determines that the satisfaction of that requirement is not necessary to protect the public health or the environment.

B. The Department may exempt a class of regulated introductions from part or all of any requirement under this chapter if the Department determines that the satisfaction of those requirements or part thereof is not necessary to protect the public health or the environment.

C. Planned regulated introductions approved by a federal regulator pursuant to the federal Coordinated Framework prior to enactment of this chapter shall be exempt from the provisions of this chapter.

1994, c. 472, § 2.1-771; 2001, c. 844.

§ 2.2-5503. Requirements for regulated introduction

Except as provided under § 2.2-5502, no person may commence a regulated introduction unless the person:

1. Provides to the Department all of the following information within seven days after the person submits or should have submitted the information specified in subdivisions 1 a and 1 b to a federal regulator, whichever is sooner:

a. A copy of all information that the person is required to submit to the federal regulator and that is not confidential information; and

b. A summary of any confidential information that the person submits or is required to submit to a federal regulator. The summary shall provide sufficient information to enable the Department to

exercise its notice and comment functions under §§ 2.2-5504 and 2.2-5505, to provide public notice pursuant to § 2.2-5504, and to prepare comments pursuant to § 2.2-5505, and shall have minimal extraneous and irrelevant information. The summary shall also provide sufficient information to enable the locality in which the introduction is proposed to be made to exercise its comment function under § 2.2-5505.

2. Provides such additional information, if any, as is necessary to enable the Department to fulfill any functions it undertakes, on a case-by-case basis, under § 2.2-5505.

1994, c. 472, § 2.1-772; 2001, c. 844.

§ 2.2-5504. Public notice of proposed regulated introduction

Within fifteen days after receiving the information required under § 2.2-5503, the Department shall publish notice and a brief description of the proposed regulated introduction. Notice shall also be provided to any affected locality and to any person who has filed a written request to be notified of regulated introductions. Notice shall be given by publication one time in a newspaper having general circulation in each locality where the regulated introduction is proposed to be made. In addition, subject to the provisions of this chapter regarding confidential business information, any documents submitted to the Department as required under § 2.2-5503 shall be available for public inspection or copying at or near the site of the proposed regulated introduction and at the offices of the Department.

1994, c. 472, § 2.1-773; 2001, c. 844.

§ 2.2-5505. Comment on proposed regulated introduction

A. The Department and any affected locality may prepare formal comments on the regulated introduction for submission to the federal regulator for that regulated introduction. The comments shall be submitted within the time established by the federal regulator for that regulated introduction, as determined by the applicable federal requirements or the Coordinated Framework. The comments shall address issues raised by application of the criteria for the granting of approval of a permit or a license under the applicable requirement in the Coordinated Framework and for the protection of the public health and the environment.

B. To assist in the preparation of comments, the Department may do any or all of the following:

1. Hold an informational meeting on the proposed regulated introduction;

2. Provide an opportunity for the public to comment on the proposed regulated introduction;

3. Request any additional information necessary on the proposed regulated introduction from the person providing information under § 2.2-5503;

4. Conduct a technical review of the proposed regulated introduction; and

5. Seek the assistance of the faculty and academic staff of any Virginia public institution of higher education, the Department of Health, the Department of Agriculture and Consumer Services, the Department of Environmental Quality, or any other appropriate state agency or organization,

including but not limited to an institutional biosafety committee, in reviewing the proposed regulated introduction.

C. To assist in the preparation of comments, affected localities may do either or both of the following:

1. Hold an informational meeting on the proposed regulated introduction. When possible, that meeting shall be held in conjunction with an informational meeting held by the Department; and

2. Provide an opportunity for the public to comment on the proposed regulated introduction.

1994, c. 472, § 2.1-774; 2001, c. 844.

§ 2.2-5506. Confidential business information; Department to establish procedures

A. Except as provided in subsections B and C, the Department and any affected locality shall keep confidential any information received under this chapter if the person submitting the information notifies them that:

1. The federal regulator to whom the information has been submitted has determined that the information is entitled to confidential treatment and is not subject to public disclosure under the federal Freedom of Information Act, 5 U.S.C. § 552, as amended, or under the Coordinated Framework; or

2. The person submitting the information to the Department and any locality has submitted a claim to the federal regulator that the information is entitled to confidential treatment under the federal Freedom of Information Act or under the Coordinated Framework, and the federal regulator has not made a determination on that claim.

B. Subsection A shall not prevent the Department from using the information for the purposes of subdivision B 4 or B 5 of § 2.2-5505, subject to the requirements of subsection D.

C. The Department shall allow public access to any information that has been granted confidentiality under subsection A if either of the following occurs:

1. The person providing the information expressly agrees in writing to the public access of the information; or

2. After information has been granted confidentiality under subdivision A. 2., the federal regulator makes a determination that the information is not entitled to confidential treatment under the federal Freedom of Information Act or under the Coordinated Framework.

D. The Department shall establish procedures to protect information required to be kept confidential under subsection A. Under the procedures, the Department shall not submit any information under subdivision B 4 or B 5 of § 2.2-5505 to any person who is not an employee of the Department unless that person has signed an agreement that satisfies the requirements of subsection E.

E. Any agreement under subsection D shall (i) provide that information that is the subject of the agreement shall be subject to confidential treatment; (ii) prohibit the release or sharing of the information with any other person except at the direction of the Department and in compliance with this chapter; (iii) acknowledge the penalties in § 59.1-338 of the Virginia Uniform Trade Secrets Act (§ 59.1-336, et seq.) and any other applicable law of the Commonwealth identified by the Department for the unauthorized disclosure of the information; and (iv) contain a statement that the person receiving the information, any member of his immediate family or any organization with which he is associated has no substantial financial interest in the regulated introduction that is the subject of the information.

F. Any person submitting the information under § 2.2-5503 may waive any of the requirements under this section.

1994, c. 472, § 2.1-775; 2001, c. 844.

§ 2.2-5507. Enforcement

The Department shall enforce the provisions of §§ 2.2-5503 and 2.2-5506. Actions to enforce this chapter by injunctive and any other relief appropriate for enforcement may be filed in the Circuit Court of the City of Richmond or in any county or municipality where a violation occurred in whole or in part. In an enforcement action under this chapter, if it is determined that a person commenced a regulated introduction and did not comply with § 2.2-5503, the court may enter an injunction directing the person to cease the regulated introduction and may order any additional action necessary to protect human health and the environment.

1994, c. 472, § 2.1-776; 2001, c. 844.

§ 2.2-5508. Penalties

A civil penalty of not more than $500 may be assessed by the Department against any person who violates any provision of this chapter. In determining the amount of the penalty, the Department shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Process Act, (§ 2.2-4000 et seq.). Any continuing failure to notify under § 2.2-5503 shall constitute the same offense for purposes of imposing the penalty authorized by this section.

1994, c. 472, § 2.1-777; 2001, c. 844.

§ 2.2-5509. Limitation on local regulation

No locality shall enact any regulation or ordinance regulating or prohibiting (i) the planned introduction of genetically engineered organisms into the environment or (ii) biotechnology research activities; however, the siting of biotechnology research activities shall be subject to the zoning and land-use laws and regulations of the localities in which such activities are conducted, the Uniform Statewide Building Code (§ 36-97 et seq.), the Statewide Fire Prevention Code (§ 27-94 et

seq.), local public utility and public works ordinances and regulations of general application, and local tax ordinances of general application.

1994, c. 472, § 2.1-778; 2001, c. 844.

Chapter 55.1 - GOVERNMENT PERFORMANCE AND RESULTS ACT

§ 2.2-5510. (Expires July 1, 2017) Strategic plan

A. Each agency shall develop and maintain a strategic plan for its operations. The plan shall include:

1. A statement of the mission, goals, strategies, and performance measures of the agency that are linked into the performance management system directed by long-term objectives;

2. Identification of priority and other service populations under current law and how those populations are expected to change within the time period of the plan;

3. An analysis of any likely or expected changes in the services provided by the agency; and

4. An analysis of the impact that the aging of the population will have on its ability to deliver services and a description of how the agency is responding to these changes. Each agency shall report every four years in a manner and time frame established by the Secretary of Health and Human Resources in coordination with the Department for Aging and Rehabilitative Services its progress in addressing the impact of the aging of the population, according to guidance established by the Secretary of Health and Human Resources. Based upon information received, the Department for Aging and Rehabilitative Services shall incorporate this information into the Plans for Aging Services required pursuant to § 51.5-136.

B. Strategic plans shall also include the following information:

1. Input, output, and outcome measures for the agency;

2. A description of the use of current agency resources in meeting current needs and expected future needs, and additional resources that may be necessary to meet future needs; and

3. A description of the activities of the agency that have received either a lesser priority or have been eliminated from the agency's mission or work plan over the previous year because of changing needs, conditions, focus, or mission.

C. The strategic plan shall cover a period of at least two years forward from the fiscal year in which it is submitted and shall be reviewed by the agency annually.

D. Each agency shall post its strategic plan on the Internet.

2003, c. 900; 2006, c. 54; 2007, c. 507; 2010, cc. 411, 801; 2012, cc. 803, 835.

§ 2.2-5511. (Expires July 1, 2017) Review of strategic plan information

The Governor shall develop an implementation plan providing for each agency to develop a strategic plan. Such implementation plan shall provide for agency submission of individual strategic

plans over a three-year period beginning December 1, 2003, and ending December 1, 2006, and require, at a minimum, one-third of state agencies each year to so submit. Thereafter, each agency shall submit, on a biennial basis by December 1 in even-numbered years, its strategic plan including goals, strategies, and performance measures for consideration and review by the Council on Virginia's Future. After review, the Council may submit comments to the Governor regarding any concerns about the strategic plan or recommendations to improve the plan.

2003, c. 900.

Chapter 55.2 - COMPETITIVE GOVERNMENT ACT

§ 2.2-5512. Definitions

As used in this chapter:

"Commercial activity" means an activity performed by or for state government that is not an inherently governmental activity and that may feasibly be obtained from a commercial source at lower cost than the activity being performed by state employees.

"Commercial source" means any business or other private concern that is eligible for contract awarded in accordance with the Public-Private Education and Infrastructure Act of 2002 (§ 56-575.1 et seq.) or the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

"State employee" means all persons employed by the Commonwealth to provide services, including both salaried and wage employees, and all persons engaged to perform work for or to provide services to the Commonwealth.

2004, c. 994.

§ 2.2-5513. Responsibilities of Governor to ensure efficiency in government

A. The Governor shall cause to be conducted an examination of the commercial activities that are being performed by state employees at state agencies and institutions to ensure such activities are being accomplished in the most cost-efficient and effective manner.

B. The examination required by subsection A shall be completed at least once in every two-year period and may be conducted entirely by a commercial source through a solicitation process as provided in the Virginia Public Procurement Act (§ 2.2-4300 et seq.) or the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

C. The examination required by subsection A shall consider at least three commercial activities as the Governor or the commercial source may identify.

D. Upon determination that outsourcing a commercial activity may result in reduced costs or otherwise provide a measurable benefit to the Commonwealth and to assure such activities are being accomplished in the most cost efficient and effective manner, the Governor shall cause that commercial activity to be competed in accordance with the Virginia Public Procurement Act or by

using the processes described in the Public-Private Education Facilities and Infrastructure Act of 2002 (§ 56-575.1 et seq.).

2004, c. 994.

Part C - INTERSTATE COMPACTS AND AGREEMENTS

Chapter 56 - SOUTHERN STATES ENERGY COMPACT

§ 2.2-5600. Form of compact

The General Assembly hereby enacts, and the Commonwealth of Virginia hereby enters into, the Southern States Energy Compact with any and all states legally joining therein according to its terms, in the form substantially as follows:

Article I. Policy and Purpose.

The party states recognize that the proper employment and conservation of energy and employment of energy-related facilities, materials, and products, within the context of a responsible regard for the environment can assist substantially in the industrialization of the South and the development of a balanced economy for the region. They also recognize that optimum benefit from the acquisition of energy resources and facilities require systematic encouragement, guidance, and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and framework for such a cooperative effort to improve the economy of the South and contribute to the individual and community well-being of the region's people.

Article II. The Board.

A. There is created an agency of the party states to be known as the "Southern States Energy Board" (hereinafter called the Board). The Board shall be composed of three members from each party state, one of whom shall be appointed or designated in each state to represent the Governor, the State Senate and the State House of Representatives, respectively. Each member shall be designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the Board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any lesser period of time) by a deputy or assistant, if the laws of his state make specific provisions therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

B. Each party state shall be entitled to one vote on the Board, to be determined by majority vote of each member or member's representative from the party state present and voting on any question. No action of the Board shall be binding unless taken at a meeting at which a majority of all party states are represented and unless a majority of the total number of votes on the Board are cast in favor thereof.

C. The Board shall have a seal.

D. The Board shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The Board shall appoint an Executive Director who shall serve at its pleasure and who shall also act as Secretary, and who, together with the Treasurer, shall be bonded in such amounts as the Board may require.

E. The Executive Director, with the approval of the Board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

F. The Board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its full-time employees. Employees of the Board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the Board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

G. The Board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

H. The Board may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize and dispose of the same.

I. The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

J. The Board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The Board shall publish its bylaws, rules and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

K. The Board annually shall make to the governor of each party state, a report covering the activities of the Board for the preceding year, and embodying such recommendations as may have been adopted by the Board, which report shall be transmitted to the legislature of said state. The Board may issue such additional reports as it may deem desirable.

Article III. Finances.

A. The Board shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

B. Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One-half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one quarter of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the last decennial federal census; and one quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the Board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the Board.

C. The Board may meet any of its obligations in whole or in part with funds available to it under Article II (h) of this compact, provided that the Board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the Board makes use of funds available to it under Article II H, the Board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

D. The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Board.

E. The accounts of the Board shall be open at any reasonable time for inspection.

Article IV. Advisory Committees.

The Board may establish such advisory and technical committees as it may deem necessary, membership on which to include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

Article V. Powers.

The Board shall have power to:

A. Ascertain and analyze on a continuing basis the position of the South with respect to energy, energy-related industries and environmental concerns.

B. Encourage the development, conservation, and responsible use of energy and energy-related facilities, installation, and products as part of a balanced economy and healthy environment.

C. Collect, correlate, and disseminate information relating to civilian uses of energy and energy-related materials and products.

D. Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspect of

1. Energy, environment, and application of energy, environmental, and related concerns to industry, medicine, or education or the promotion or regulation thereof.

2. The formulation or administration of measures designed to promote safety in any matter related to the development, use or disposal of energy and energy-related materials, products, installations, or wastes.

E. Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of energy product, material, or equipment use and disposal and of proper techniques or processes for the application of energy resources to the civilian economy or general welfare.

F. Undertake such nonregulatory functions with respect to sources of radiation as may promote the economic development and general welfare of the region.

G. Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to energy and environmental fields.

H. Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstance which may justify variations to meet local conditions.

I. Prepare, publish and distribute, (with or without charge) such reports, bulletins, newsletters or other material as it deems appropriate.

J. Cooperate with the United States Department of Energy or any agency successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interests.

K. Act as licensee of the United States government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

L. Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of energy and environmental incidents in the area comprising the party states, to coordinate the nuclear, environmental and other energy-related incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with energy and environmental incidents.

The Board may formulate and, in accordance with need from time to time, revise a regional plan or regional plans for coping with energy and environmental incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

Article VI. Supplementary Agreements.

A. To the extent that the Board has not undertaken any activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the Board. The Board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the Board.

B. Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the Board may administer or otherwise assist in the operation of any supplementary agreement.

C. No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

Article VII. Other Laws and Relationships.

Nothing in this compact shall be construed to:

A. Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

B. Limit, diminish, or otherwise impair jurisdiction exercised by the United States Department of Energy, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress.

C. Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.

D. Permit or authorize the Board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the Board own or operate any facility or installation for industrial or commercial purposes.

Article VIII. Eligible Parties, Entry Into Force or Withdrawal.

A. Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, the Commonwealth of Puerto Rico, and the United States Virgin Islands shall be eligible to become party to this compact.

B. As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law; provided that it shall not become initially effective until enacted into law by seven states.

C. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.

Article IX. Severability and Construction.

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof.

1962, c. 364, § 2-306; 1966, c. 677, § 2.1-336; 1979, c. 295; 2001, c. 844.

§ 2.2-5601. Appointment, term, compensation, and expenses of members of Southern States Energy Board

The Commonwealth's representatives to the Southern States Energy Board shall be appointed in compliance with Article II of the Southern States Energy Compact as follows: three members of the House of Delegates, of whom two shall serve as alternates, to be appointed by the Speaker of the House of Delegates; three members of the Senate, of whom two shall serve as alternates, to be appointed by the Senate Committee on Rules; and one nonlegislative citizen member to be appointed by the Governor. Alternate legislative members appointed by the Speaker of the House and the Senate Committee on Rules shall meet the same qualifications as the principal legislative members appointed to serve. Legislative members shall serve terms coincident with their terms of office and shall not have the authority to designate an alternate in accordance with Article II of the compact. The gubernatorial appointee shall serve at the pleasure of the Governor. If any member appointed is the head of a department or agency of the Commonwealth, he may designate a subordinate officer or employee of his department or agency to serve in his stead as permitted by Article II A of the compact and in conformity with any applicable bylaws of the Board. All members may be reappointed for successive terms.

Legislative members of the Board shall receive such compensation as provided in § 30-19.12 and shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. The costs of compensation and expenses of the legislative members shall be paid from appropriations to the Virginia Commission on Intergovernmental Cooperation for the attendance of conferences. The nonlegislative citizen member of the Board shall receive such compensation and reimbursement for all his reasonable and necessary expenses in the performance of his duties as may be appropriated or made available for such purposes.

1962, c. 364, § 2-307; 1966, c. 677, § 2.1-337; 1979, c. 295; 2001, c. 844; 2003, c. 885; 2004, c. 1000; 2014, c. 516.

§ 2.2-5602. Supplementary agreements

No supplementary agreement entered into pursuant to Article VI of the compact and requiring the expenditure of funds or the assumption of an obligation to expend funds in addition to those already appropriated shall become effective as to the Commonwealth unless funds therefor are or have been appropriated as provided by law.

1962, c. 364, § 2-308; 1966, c. 677, § 2.1-338; 1979, c. 295; 2001, c. 844.

§ 2.2-5603. Cooperation of departments, agencies and officers of Commonwealth

All departments, agencies and officers of the Commonwealth and its political subdivisions may cooperate with the Southern States Energy Board in the furtherance of any of its activities pursuant to the compact.

1962, c. 364, § 2-309; 1966, c. 677, § 2.1-339; 1979, c. 295; 2001, c. 844.

Chapter 57 - SOUTHERN GROWTH POLICIES AGREEMENT

§§ 2.2-5700 through 2.2-5702. Repealed

Repealed by Acts 2012, c. 784, cl. 1, effective July 1, 2013.

Chapter 58 - DELMARVA PENINSULA COMPACT

§§ 2.2-5800 through 2.2-5803. Repealed

Repealed by Acts 2010, c. 699, cl. 1.

Chapter 59 - CHESAPEAKE REGIONAL OLYMPIC GAMES COMPACT

§ 2.2-5900. Form of compact

The General Assembly hereby enacts, and the Commonwealth of Virginia hereby enters into, the Chesapeake Regional Olympic Games Compact with any and all states legally joining therein according to its terms, in the form substantially as follows:

CHESAPEAKE REGIONAL OLYMPIC GAMES COMPACT.

Article I. Purpose and Findings.

A. The purpose of this compact shall be to create a regional authority to oversee the conduct of the 2012 Olympic Games, coordinated and managed by the local Organizing Committee for the Olympic Games (OCOG), and to assure that the region's guarantees and commitments accepted in conjunction with hosting the Olympic Games are fulfilled.

B. The General Assembly finds that:

1. For some time, the State of Maryland (including the City of Baltimore), the District of Columbia, and the Commonwealth of Virginia, through the nonprofit organization known as the Washington/Baltimore Regional 2012 Coalition (WBRC 2012), have been actively engaged in national competition to win the U.S. Candidate City designation and, subsequently, the Host City designation and the right to host the 2012 Olympic Games.

2. Hosting the Olympic Games will provide several major, lasting, and unique benefits for all of the citizens of the Chesapeake region, including:

a. Direct, positive economic impact on our regional economy;

b. An opportunity to showcase our region to the world;

c. A catalyst for regional action; and

d. A renewed sense of pride along with a tangible legacy (e.g. new and improved venues and enhanced transportation infrastructure).

3. Independent economic studies show that preparing for and hosting the Olympic Games will have a positive economic impact on the region, including:

a. Direct and indirect spending in excess of $5,000,000,000;

b. The creation of approximately 70,000 jobs;

c. Increased tax revenues resulting from Olympic-related economic activity in excess of $130,000,000, without raising or creating any new taxes; and

d. A lasting improvement in the region's competitive position within the travel/tourism industry, as well as the region's ability to attract new businesses.

4. The citizens of the region have responded positively to WBRC 2012's efforts and solidly embraced the cause to host the Olympic Games, expressed in part by the endorsement of scores of local business, civic, governmental, academic, and amateur sports organizations, and by survey results that show (i) eighty-two percent of the region's residents support the effort to bring the 2012 Olympic Games to this area and (ii) eighty-six percent of area residents believe that the Olympic Games will bring substantial economic benefits to our region.

5. Through the submission of the region's official bid proposal to the United States Olympic Committee (USOC) on December 15, 2000, WBRC 2012 reached a milestone in the process of capturing the Olympic Games by providing a 631-page logistical, operational, and financial blueprint for hosting the 2012 Games.

6. The bid proposal highlights the great venues and vistas found in our region and is developed around key principles, including (i) building less, not more and (ii) utilizing mass transit, and (iii) protecting the environment.

7. In addition to the region's bid proposal, the USOC and the International Olympic Committee (IOC) require certain government guarantees and commitments in conjunction with hosting the 2012 Olympic Games, should our region win the U.S. Candidate City designation.

8. Our unique regional approach to winning the right to host the Olympic Games creates the added complication of determining which entities will provide the necessary guarantees.

9. It is incumbent upon WBRC 2012 and government leaders to move forward together now to craft the solution that best "lives regionalism" and maximizes the region's chances of winning the 2012 Olympic Games, and reaping the many benefits that come with this honor.

10. Given that all four jurisdictions, Virginia, Maryland, the District of Columbia, and Baltimore, will host a significant number of events and reap substantial benefits, the most effective solution for all four jurisdictions is to enter into a single agreement that gives the USOC (and subsequently the IOC) a single focal point and a united front that reflects the regional nature of our bid.

Article II. Definitions.

As used in this compact:

"Bid Proposal" means the bid formally submitted by WBRC 2012 to the USOC on December 15, 2000.

"Host City" means the entity that has been selected by the International Olympic Committee to host the 2012 Olympic Games.

"International Olympic Committee" and "IOC" means the International Olympic Committee, a body corporate under international law created by the Congress of Paris of 23 June, 1894, and having perpetual succession.

"Olympic Games" means any Olympic Games sponsored and governed by the International Olympic Committee and any other educational, cultural, athletic, or sporting events related or preliminary thereto.

"Organizing Committee for the Olympic Games," and "OCOG" means the Committee formed by WBRC 2012 to organize and conduct the Olympic Games, if WBRC 2012 is selected by the IOC as the host city in 2005.

"Signatories" means the Commonwealth of Virginia, the State of Maryland, the District of Columbia, and the City of Baltimore.

"U.S. Candidate City" means the entity that has received the United States Olympic Committee's endorsement to submit to the IOC the sole bid from the United States for the hosting of the 2012 Olympic Games.

"United States Olympic Committee" and "USOC" means the United States Olympic Committee, incorporated by Act of Congress on September 21, 1950, and having perpetual succession.

"WBRC 2012" means Washington/Baltimore Regional 2012 Coalition, a not-for-profit corporation organized under the laws of the State of Maryland, and its successors.

Article III. Creation of Regional Authority.

A. The Signatories hereby provide the mechanism for the creation and termination of the "Chesapeake Regional Olympic Games Authority," hereinafter "Regional Authority," which shall be an instrumentality of the Commonwealth of Virginia, the State of Maryland, the District of Columbia, and the City of Baltimore, and shall have the powers and duties set forth herein, and those additional powers and duties conferred upon it by subsequent actions of the signatories.

B. The Regional Authority shall come into existence by the force of this compact when and if, and only if, the IOC awards the 2012 Olympic Games in year 2005 to WBRC 2012, as the U.S. Candidate City and the official representative of the Maryland, Virginia, District of Columbia, Baltimore region.

C. The Regional Authority shall, if ever brought into existence, cease to exist by the force of this Compact on January 1, 2014, unless extended by substantially similar future legislation passed by each of the Signatories.

D. Until such time as the Regional Authority comes into existence, the combined signatures of the Governors of Virginia and Maryland, and the Mayors of the District of Columbia and Baltimore, on

any and all documents necessary and appropriate to the pursuit of the 2012 Olympic Games shall be deemed binding on future actions of the Regional Authority.

For the purposes of this subsection, (i) the above referenced signatures may be on the same document, on separate but materially and substantially similar documents, or any combination thereof; and (ii) no individual signature shall be deemed effective until such time as all four above referenced signatures are obtained.

Article IV. Regional Authority; Composition; Terms; Accounting.

A. The Regional Authority shall be composed of eleven voting members, as follows: The State of Maryland shall be entitled to three voting members, to be appointed by the Governor of Maryland; the Commonwealth of Virginia shall be entitled to three voting members, to be appointed by the Governor of Virginia; the District of Columbia shall be entitled to three voting members, to be appointed by the Mayor of the District of Columbia; the City of Baltimore shall be entitled to one voting member, to be appointed by the Mayor of the City of Baltimore; and the Washington/Baltimore Regional 2012 Coalition, a not-for-profit corporation created for the sole purpose of bringing the Olympic Games to the region, or the OCOG, shall be entitled to one voting member, to be appointed in a manner consistent with its usual procedure.

B. The Regional Authority shall cause to be formed a Regional Authority Advisory Committee, which shall be comprised of representatives (Advisory Members) from each of the local jurisdictions substantially impacted by hosting the Olympic Games in the region, in a manner to be determined by the Regional Authority.

C. Reasonable efforts should be made to ensure that appointments of voting members and advisory members (i) are residents of the regional community with relevant and useful experience, and with sufficient time to devote to the duties of the Regional Authority, to help facilitate the successful hosting of the Olympic Games; (ii) reflect the geographical diversity inherent in the regional nature of WBRC 2012's bid proposal; and (iii) reflect the cultural, ethnic, and racial diversity inherent in the Chesapeake Region.

D. Voting members shall not be compensated for their service on the Regional Authority, but shall be entitled to be reimbursed by the Regional Authority for normal and customary expenses incurred in the performance of their duties.

E. The terms of the voting members of the Regional Authority shall be two years. Each voting member shall hold office until his successor shall be appointed and duly qualified. Any voting member of the Regional Authority may succeed himself. All vacancies in the membership of the voting members of the Regional Authority shall be filled in the manner of the original appointment for remainder of the unexpired term.

F. The Regional Authority shall elect from its membership a chair, a vice-chair, a secretary, and a treasurer. Such officers shall serve for such terms as shall be prescribed by resolution of the

Regional Authority or until their successors are elected and qualified. No voting member of the Regional Authority shall hold more than one office on the Regional Authority.

G. Regular meetings of the Regional Authority shall be held on such dates and at such time and place as shall be fixed by resolution of the Regional Authority. Special meetings of the Regional Authority may be called by resolution of the authority, by the chairman or vice-chairman, or upon the written request of at least three voting members of the Regional Authority. Written notice of all meetings shall be delivered to each voting member, not less than three days prior to the date of the meeting in the case of regular meetings and not less than twenty-four hours in the case of special meetings.

H. A majority of the voting members of the Regional Authority shall constitute a quorum. A majority of the quorum is empowered to exercise all the rights and perform all the duties of the Regional Authority and no vacancy on the Regional Authority shall impair the right of such majority to act. If at any meeting there is less than a quorum present, a majority of those present may adjourn the meeting to a fixed time and place, and notice of the time and place shall be given in accordance with subsection G, provided that if the notice period required by subsection G cannot reasonably be complied with, such notice, if any, of such adjourned meeting shall be given as is reasonably practical.

I. The Regional Authority shall establish rules and regulations for its own governance, not inconsistent with this compact.

J. The Regional Authority shall make provision for a system of financial accounting and controls, audits, and reports. All accounting systems and records, auditing procedures and standards, and financial reporting shall conform to generally accepted principles of governmental accounting. All financial records, reports, and documents of the Regional Authority shall be public records and open to public inspection under reasonable regulations prescribed by the Regional Authority.

The Regional Authority shall designate a fiscal year, establish a system of accounting and financial control, designate the necessary funds for complete accountability, and specify the basis of accounting for each fund. The Regional Authority shall cause to be prepared a financial report on all funds at least quarterly and a comprehensive report on the fiscal operations and conditions of the Regional Authority annually.

Article V. Funding of Regional Authority.

A. The OCOG shall provide reasonable funds for the operation of the Regional Authority and the conduct of its business in accordance with the provisions of this compact.

B. For the purposes of this article, payment of any insurance premiums incurred by the Regional Authority under the authority granted to it by Article VI shall not be considered operations funds referred to in subsection A. The OCOG shall pay only such insurance premiums as are reasonable.

C. The OCOG shall not be responsible for any financial liability that the Regional Authority may incur under Article VI.

D. The Regional Authority shall submit to the OCOG a planned budget for the Regional Authority's next fiscal year, adopted consistent with Article IV, no less than ninety days before the beginning of the next fiscal year.

Article VI. Regional Authority Oversight of Organizing Committee of the Olympic Games; Additional Powers.

A. The Regional Authority, in recognition of its oversight responsibility over the OCOG, shall have access to (i) the quarterly financial statements of the OCOG, (ii) the annual business plans of the OCOG, and (iii) all other OCOG documents necessary to achieve its oversight purpose.

B. The Regional Authority shall have the power to enforce OCOG budgetary and planning changes when review by the Regional Authority of the OCOG financial statements, annual business plans, or other documents contemplated in this article suggests (i) economic shortfalls that would possibly trigger the Regional Authority's liability outlined in this article; or (ii) the OCOG fails to host the Olympic Games in a manner that would satisfy the requirements of the USOC or the IOC; and such changes are supported by a majority of the voting members of the Regional Authority, notwithstanding the quorum requirements of Article IV.

C. The Regional Authority, in recognition of its duties as overseer of the OCOG, shall:

1. Be bound by the terms of, cause the OCOG to perform, and guaranty performance of the OCOG's obligations under all documents necessary and appropriate to the pursuit of the Olympic Games;

2. Certify the OCOG's performance of such obligations as requested by the USOC from time to time;

3. Accept liability for the OCOG, if any, as far as required by all documents necessary and appropriate to the pursuit and hosting of the Olympic Games; and

4. Accept liability, if any, with the OCOG, for any financial deficit of the OCOG, or the Olympic Games, as follows:

a. The OCOG shall be responsible for any amount up to twenty-five million dollars;

b. The Regional Authority shall be liable for any amount in excess of twenty-five million dollars, but not to exceed an additional $175 million; and

c. Except as set forth in existing applicable law, the OCOG and the Regional Authority shall not be limited in their choice of funding sources for covering possible financial losses, including but not limited to the purchase of insurance, if commercially available and reasonably priced.

D. The Regional Authority, in its financial oversight and safeguard role, shall ensure that no legacy programs, funds, or accounts shall be funded from any of the proceeds of the 2012 Olympic Games until all budgetary and operational financial obligations of the OCOG and the Regional Authority

for hosting the Olympic Games are first met; and that no liability for any financial deficit resulting from the 2012 Olympic Games shall accrue to the Regional Authority (or the Signatories) until all budgetary and/or operational financial surpluses of the OCOG, if any, are applied to all outstanding financial obligations of OCOG and the Regional Authority, if any, accrued exclusively in connection with hosting the Olympic Games.

E. The Regional Authority, in order to facilitate its oversight responsibility over the OCOG, shall have the additional powers to:

1. Sue and be sued in contract and in tort;

2. Complain and defend in all courts;

3. Implead and be impleaded;

4. Enter into contracts;

5. Hire appropriate staff; and

6. Exercise any additional powers granted to it by subsequent legislation.

Article VII. Indemnification.

A. Any liability incurred by the Regional Authority, not covered by insurance under Article VI, shall be further indemnified by the signatories to this compact, in proportion to the relative economic benefit currently expected to accrue to each signatory from hosting the Olympic Games, as follows:

1. The State of Maryland shall be liable for fifty-three percent;

2. The Commonwealth of Virginia shall be liable for nineteen percent; and

3. The District of Columbia shall be liable for twenty-eight percent.

B. Each of the signatories to this compact may provide for its share of any possible liability in any manner it may choose, as befits each signatory's independent commitment.

Article VIII. Commitments of Signatories.

As appropriate to its individual jurisdiction and specific role in hosting the 2012 Olympic Games, each Signatory agrees to:

1. Ensure that necessary facilities are built and transportation infrastructure improvements take place, including government funding as appropriate;

2. Provide access to existing state/city-controlled facilities and other important resources as specified in WBRC 2012's bid proposal, in accordance with applicable law and contractual obligations; and

3. Provide adequate security, fire protection and other government-related services at a reasonable cost to ensure for the safe and orderly operation of the Olympic Games.

Article IX. Compliance With Local Law.

The Regional Authority shall make every effort to comply with the local laws of each of the Signatories to this compact, regarding disclosure, appointment, and open meetings.

Article X. Effective Dates.

None of the duties or responsibilities encompassed in this compact shall have effect until substantially similar legislation is passed by each of the signatories, at which time this compact shall immediately be effective.

2001, c. 824, § 2.1-818; 2002, c. 491.

§ 2.2-5901. Certain documents to be filed with Secretary of Commonwealth

Copies of the Regional Authority's rules and regulations for its own governance required pursuant to Article IV shall be filed with the Secretary of the Commonwealth.

2001, c. 824, § 2.1-819.

Chapter 60 - MID-ATLANTIC OFFSHORE WIND ENERGY INFRASTRUCTURE DEVELOPMENT COMPACT

§ 2.2-6000. Repealed

Repealed by Acts 2011, c. 305.