CODE OF VIRGINIA

Title 10.1

Conservation

Title 10.1 - CONSERVATION

Subtitle I - ACTIVITIES ADMINISTERED BY THE DEPARTMENT OF CONSERVATION AND RECREATION

Chapter 1 - GENERAL PROVISIONS

Article 1 - DEPARTMENT OF CONSERVATION AND RECREATION

§ 10.1-100. Definitions.

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

"Department" means the Department of Conservation and Recreation.

"Director" means the Director of the Department of Conservation and Recreation.

1988, c. 891; 1989, c. 656.

§ 10.1-101. Department continued; appointment of Director.

The Department of Conservation and Historic Resources is continued as the Department of Conservation and Recreation. The Department shall be headed by a Director appointed by the Governor to serve at his pleasure for a term coincident with his own.

1984, c. 750, § 10-252; 1988, c. 891; 1989, c. 656.

§ 10.1-102. Powers and duties of Director.

The Director, under the direction and control of the Governor, shall exercise the powers and perform the duties that are conferred upon him by law and he shall perform such other duties as may be required of him by the Governor or the appropriate citizen boards.

1984, c. 750, § 10-252.1; 1988, c. 891.

§ 10.1-103. Organization of the Department.

The Director shall establish divisions through which the functions of the Department and the corresponding powers and duties may be exercised and discharged. The Director shall appoint competent persons to direct the various functions and programs of the Department, and may delegate any of the powers and duties conferred or imposed by law upon him.

1984, c. 750, § 10-253; 1986, c. 567; 1987, c. 234; 1988, c. 891; 1989, c. 656.

§ 10.1-104. Powers of the Department.

A. The Department shall have the following powers, which may be delegated by the Director:

1. To employ such personnel as may be required to carry out those duties conferred by law;

2. To make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers, including but not limited to contracts with private nonprofit

organizations, the United States, other state agencies and political subdivisions of the Commonwealth;

3. To accept bequests and gifts of real and personal property as well as endowments, funds, and grants from the United States government, its agencies and instrumentalities, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient or desirable;

4. To prescribe rules and regulations necessary or incidental to the performance of duties or execution of powers conferred by law;

5. To establish noncompetitively procured contracts, notwithstanding the Virginia Public Procurement Act (§ 2.2-4300 et seq.), with private nonprofit organizations that are exempt from federal taxation, to conduct revenue producing activities on Department lands provided the revenue generated after expenses is used to benefit Virginia State Parks and the Natural Area Preserve System. This subsection shall not provide for establishing contracts for capital improvements to state-owned facilities or on Department lands;

6. To establish the Office of Environmental Education to provide increased opportunities for public education programs on environmental issues. The Office shall initiate and supervise programs designed to educate citizens on ecology, pollution and its control, technology and its relationship to environmental problems and their solutions, population and its relationship to environmental problems, and other matters concerning environmental quality;

7. To perform acts necessary or convenient to carry out the duties conferred by law; and

8. To assess civil penalties for violations of § 10.1-200.3.

B. Pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), the Department may promulgate regulations necessary to carry out the purposes and provisions of this subtitle. A violation of any regulation shall constitute a Class 1 misdemeanor, unless a different penalty is prescribed by the Code of Virginia. However, a violation of the Virginia State Park Regulations (4VAC5-30) shall constitute a Class 3 misdemeanor.

1984, c. 739, §§ 10-21.3:4, 10-21.3:5; 1984, c. 750, § 10-254; 1985, c. 448; 1988, c. 891; 2001, c. 370; 2007, c. 632; 2009, c. 392; 2012, cc. 803, 835.

§ 10.1-104.01. Repealed.

Repealed by Acts 2020, c. 490, cl. 2.

§ 10.1-104.1. Department to assist in the nonpoint source pollution management program.

A. The Department, with the advice of the Board of Conservation and Recreation and the Virginia Soil and Water Conservation Board and in cooperation with other agencies, organizations, and the public as appropriate, shall assist in the Commonwealth's nonpoint source pollution management program.

B. The Department shall be assisted in performing its nonpoint source pollution management responsibilities by Virginia's soil and water conservation districts. Assistance by the soil and water conservation districts in the delivery of local programs and services may include (i) the provision of technical assistance to advance adoption of conservation management services, (ii) delivery of educational initiatives targeted at youth and adult groups to further awareness and understanding of water quality issues and solutions, and (iii) promotion of incentives to encourage voluntary actions by landowners and land managers in order to minimize nonpoint source pollution contributions to state waters.

The provisions of this section shall not limit the powers and duties of other state agencies.

1993, cc. 19, 830; 2004, c. 474; 2013, cc. 756, 793.

§ 10.1-104.2. Voluntary nutrient management training and certification program.

A. The Department shall operate a voluntary nutrient management training and certification program to certify, in accordance with regulations adopted by the Virginia Soil and Water Conservation Board pursuant to subsection D, the competence of persons preparing nutrient management plans for the purpose of (i) assisting landowners and operators in the management of land application of fertilizers, municipal sewage sludges, animal manures, and other nutrient sources for agronomic benefits and for the protection of the Commonwealth's ground and surface waters and (ii) assisting owners and operators of agricultural land and turf to achieve economic benefits from the effective management and application of nutrients.

B. The Department shall develop a flexible, tiered, Voluntary Nutrient Management Plan Program to assist owners and operators of agricultural land and turf in (i) preparing nutrient management plans for their own property that meet the nutrient management specifications developed by the Department and (ii) achieving economic benefits for owners and operators as a result of effective nutrient management. The Department shall convene a stakeholder group composed of individuals representing agricultural and environmental organizations to assist in the development of this Program. Individuals representing the agricultural stakeholders shall include both farmers who currently operate farms and agribusiness representatives who serve the farming community. Individuals representing environmental stakeholders shall include at least two members and a staff member of the Virginia Delegation to the Chesapeake Bay Commission and one representative from the Rappahannock River Basin Commission. The Program shall: (a) allow owners and operators of agricultural lands and turf who are not required to have a certified nutrient management plan to prepare their own nutrient management plans; (b) include a tiered approach for lands of different sizes, agricultural production, and nutrient applications; (c) consider similar online programs in other states or sponsored by baccalaureate institutions of higher education; (d) address how the nutrient management plans can be verified and receive credit in the Chesapeake Bay Watershed Model for properties in the Chesapeake Bay watershed; (e) begin testing the software for the Program by July 1, 2013, and begin full implementation by July 1, 2014; and (f) include any other issues related to developing a flexible, tiered, Voluntary Nutrient Management Plan Program for owners and operators of agricultural lands and turf.

C. Any personal or proprietary information collected pursuant to subsection B shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Director may release information that has been transformed into a statistical or aggregate form that does not allow identification of the persons who supplied, or are the subject of, particular information. This subsection shall not preclude the application of the Virginia Freedom of Information Act in all other instances of federal or state regulatory actions.

D. The Virginia Soil and Water Conservation Board shall adopt regulations:

1. Specifying qualifications and standards for individuals to be deemed competent in nutrient management plan preparation, and providing for the issuance of documentation of certification to such individuals;

2. Specifying conditions under which a certificate issued to an individual may be suspended or revoked;

3. Providing for criteria relating to the development of nutrient management plans for various agricultural and urban agronomic practices, including protocols for use by laboratories in determining soil fertility, animal manure nutrient content, or plant tissue nutrient uptake for the purpose of nutrient management;

4. Establishing fees to be paid by individuals enrolling in the training and certification programs;

5. Providing for the performance of other duties and the exercise of other powers by the Director as may be necessary to provide for the training and certification of individuals preparing nutrient management plans; and

6. Giving due consideration to relevant existing agricultural certification programs.

E. There is hereby established a special, nonreverting fund in the state treasury to be known as the Nutrient Management Training and Certification Fund. The fund shall consist of all fees collected by the Department pursuant to subsection D. No part of the fund, either principal or interest, shall revert to the general fund. The fund shall be administered by the Director, and shall be used solely for the payment of expenses of operating the nutrient management training and certification program.

F. For the purposes of this section, the term "turf" shall have the same meaning as defined in § 3.2-3600.

1994, c. 159; 2011, cc. 341, 353; 2012, c. 781; 2013, cc. 593, 658.

§ 10.1-104.2:1. Nitrogen application rates; regulations.

A. The Virginia Soil and Water Conservation Board shall adopt regulations that amend the application rates in the Virginia Nutrient Management Standards and Criteria by incorporating into such regulations or the documents incorporated by reference the recommended application rates for nitrogen in lawn fertilizer and lawn maintenance fertilizer and the recommended application rates for "slow or controlled release fertilizer" and "enhanced efficiency lawn fertilizer," as such terms are defined and

adopted or proposed for adoption by the Association of American Plant Food Control Officials, as described in the Virginia Department of Agriculture and Consumer Services' December 2011 "Report on the Use of Slowly Available Nitrogen in Lawn Fertilizer and Lawn Maintenance Fertilizer."

B. Such regulatory amendment provided for in subsection A shall follow a fast-track regulatory process established pursuant to § 2.2-4012.1 of the Administrative Process Act and shall be adopted no later than July 1, 2014.

2012, c. 796; 2013, cc. 593, 658.

§ 10.1-104.3. Clean Water Farm Award Program.

The Director shall establish the Clean Water Farm Award Program to recognize farms in the Commonwealth which utilize practices designed to protect water quality and soil resources. A farm shall be eligible for recognition upon application from the farmer or the local soil and water conservation district, if the district concurs that the farmer is implementing conservation practices that effectively address agricultural nonpoint source pollutants. Such practices may include vegetative riparian buffers, cover crops, conservation tillage, livestock exclusion from waterways, and nutrient management plans. The Director may establish guidelines for limiting the quantity of annual recipients, receiving and ranking applications, ensuring geographical representation of awards from the major watersheds of the Commonwealth including the Chesapeake Bay watershed, providing local farm recognition through the local soil and water conservation districts, and providing special statewide recognition to select farms. Recognition under this program shall not be a requirement under any other state program.

1998, c. 93; 2009, c. 349.

§ 10.1-104.4. Nutrient management plans required for state lands; review of plans.

A. On or before July 1, 2006, all state agencies, public institutions of higher education in the Commonwealth, and other state governmental entities that own land upon which fertilizer, manure, sewage sludge or other compounds containing nitrogen or phosphorus are applied to support agricultural, turf, plant growth, or other uses shall develop and implement a nutrient management plan for such land. The plan shall be in conformance with the following nutrient management requirements:

1. For all state-owned agricultural and forestal lands where nutrient applications occur, state agencies, public institutions of higher education in the Commonwealth, and other state governmental entities shall submit site-specific individual nutrient management plans prepared by a certified nutrient management planner pursuant to § 10.1-104.2 and regulations promulgated thereunder. However, where state agencies are conducting research involving nutrient application rate and timing on state-owned agricultural and forestal lands, such lands shall be exempt from the application rate and timing provisions contained in the regulations developed pursuant to § 10.1-104.2.

2. For all state-owned lands other than agricultural and forestal lands where nutrient applications occur, state agencies, public institutions of higher education in the Commonwealth, and other state governmental entities shall submit nutrient management plans prepared by a certified nutrient

management planner pursuant to § 10.1-104.2 and regulations promulgated thereunder or planning standards and specifications acceptable to the Department.

B. Plans or planning standards and specifications submitted under subdivisions A 1 and A 2 shall be reviewed and approved by the Department. Such approved plans and planning standards and specifications shall be in effect for a maximum of three years, and shall be revised and submitted for approval to the Department at least once every three years thereafter.

C. State agencies, public institutions of higher education in the Commonwealth, and other state governmental entities shall maintain and properly implement any such nutrient management plan or planning standards or specifications on all areas where nutrients are applied.

D. The Department may (i) provide technical assistance and training on the development and implementation of a nutrient management plan, (ii) conduct periodic reviews as part of its responsibilities authorized under this section, and (iii) assess an administrative charge to cover a portion of the costs for services associated with its responsibilities authorized under this section.

E. The Department shall develop written procedures for the development, submission, and the implementation of a nutrient management plan or planning standards and specifications that shall be provided to all state agencies, public institutions of higher education in the Commonwealth, and other state governmental entities that own land upon which nutrients are applied.

2005, c. 65.

§ 10.1-104.5. Nutrient management plans required for golf courses; penalty.

A. On or before July 1, 2017, all persons that own land operated as a golf course and upon which fertilizer, manure, sewage sludge, or other compounds containing nitrogen or phosphorous are applied to support turf, plant growth, or other uses shall develop and implement nutrient management plans for such land in accordance with the regulations adopted pursuant to § 10.1-104.2. However, such lands shall be exempt from the application rate and timing provisions contained in any regulations developed pursuant to § 10.1-104.2 if research involving nutrient application rate and timing is conducted on such lands.

B. Nutrient management plans developed pursuant to this section shall be submitted to the Department. The Department shall approve or contingently approve such nutrient management plans within 30 days of submission. Such nutrient management plans shall be revised and resubmitted for approval to the Department every five years thereafter or upon a major renovation or redesign of the golf course lands, whichever occurs sooner.

C. Golf courses shall maintain and properly implement approved nutrient management plans, planning standards, and specifications on all areas where nutrients are applied.

D. Nutrient management plans shall be made available to the Department upon request.

E. The Department shall (i) provide technical assistance and training on the development and implementation of nutrient management plans, planning standards, and specifications and (ii) establish, prior to July 1, 2015, a cost-share program specific to golf courses for implementation of this section.

F. Any information collected pursuant to this section shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

G. A golf course owner found to be in violation of this section after July 1, 2017, shall be given 90 days to submit a nutrient management plan to the Department for approval before a $250 civil penalty is imposed. All civil penalties imposed under this section shall be deposited in the Nutrient Management Training and Certification Fund (§ 10.1-104.2).

H. Golf courses in compliance with this section shall not be subject to local ordinances governing the use or application of fertilizer.

2011, cc. 341, 353.

§ 10.1-104.6. Supplemental environmental projects.

A. As used in this section:

"Supplemental environmental project" means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

B. The Virginia Soil and Water Conservation Board or the Director acting on behalf of the Board or under his own authority in issuing any administrative order, or any court of competent jurisdiction as provided for under this Code, may, in its or his discretion and with the consent of the person subject to the order, provide for such person to undertake one or more supplemental environmental projects. The project shall have a reasonable geographic nexus to the violation or, if no such project is available, shall advance at least one of the declared objectives of the environmental law or regulation that is the basis of the enforcement action. Performance of such projects shall be enforceable in the same manner as any other provision of the order.

C. The following categories of projects may qualify as supplemental environmental projects, provided the project otherwise meets the requirements of this section: public health, pollution prevention, pollution reduction, environmental restoration and protection, environmental compliance promotion, and emergency planning and preparedness. In determining the appropriateness and value of a supplemental environmental project, the following factors shall be considered by the enforcement authority: net project costs, benefits to the public or the environment, innovation, impact on minority or low income populations, multimedia impact, and pollution prevention. The costs of those portions of a supplemental environmental project that are funded by state or federal low-interest loans, contracts or grants shall be deducted from the net project cost in evaluating the project. In each case in which a supplemental environmental project is included as part of a settlement, an explanation of the project with any appropriate supporting documentation shall be included as part of the case file.

D. Nothing in this section shall require the disclosure of documents exempt from disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

E. Any decision whether or not to agree to a supplemental environmental project is within the sole discretion of the Virginia Soil and Water Conservation Board, Director, or court and shall not be subject to appeal.

F. Nothing in this section shall be interpreted or applied in a manner inconsistent with applicable federal law or any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

2011, c. 505.

Article 1.1 - RESOURCE MANAGEMENT PLANS

§ 10.1-104.7. Resource management plans; effect of implementation; exclusions.

A. Notwithstanding any other provision of law, agricultural landowners or operators who fully implement and maintain the applicable components of their resource management plan, in accordance with the criteria for such plans set out in § 10.1-104.8 and any regulations adopted thereunder, shall be deemed to be in full compliance with (i) any load allocation contained in a total maximum daily load (TMDL) established under § 303(d) of the federal Clean Water Act addressing benthic, bacteria, nutrient, or sediment impairments; (ii) any requirements of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan; and (iii) applicable state water quality requirements for nutrients and sediment.

B. The presumption of full compliance provided in subsection A shall not prevent or preclude enforcement of provisions pursuant to (i) a resource management plan or a nutrient management plan otherwise required by law for such operation, (ii) a Virginia Pollutant Discharge Elimination System permit, (iii) a Virginia Pollution Abatement permit, or (iv) requirements of the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.).

C. Landowners or operators who implement and maintain a resource management plan in accordance with this article shall be eligible for matching grants for agricultural best management practices provided through the Virginia Agricultural Best Management Practices Cost-Share Program administered by the Department in accordance with program eligibility rules and requirements. Such landowners and operators may also be eligible for state tax credits in accordance with §§ 58.1-339.3 and 58.1-439.5.

D. Nothing in this article shall be construed to limit, modify, impair, or supersede the authority granted to the Commissioner of Agriculture and Consumer Services pursuant to Chapter 4 (§ 3.2-400 et seq.) of Title 3.2.

E. Any personal or proprietary information collected pursuant to this article shall be exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that the Director may release information that has been transformed into a statistical or aggregate form that does not allow identification of the persons who supplied, or are the subject of, particular information. This subsection shall not

preclude the application of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) in all other instances of federal or state regulatory actions. Pursuant to subdivision 45 of § 2.2-3711, public bodies may hold closed meetings for discussion or consideration of certain records excluded from the provisions of this article and the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

2011, c. 781; 2015, cc. 27, 169; 2017, c. 616.

§ 10.1-104.8. Resource management plans; criteria.

A. The Soil and Water Conservation Board shall by regulation, and in consultation with the Department of Agriculture and Consumer Services and the Department of Environmental Quality, specify the criteria to be included in a resource management plan.

B. The regulations shall:

1. Be technically achievable and take into consideration the economic impact to the agricultural landowner or operator;

2. Include (i) determinations of persons qualified to develop resource management plans and to perform on-farm best management practice assessments; (ii) plan approval or review procedures if determined necessary; (iii) allowable implementation timelines and schedules; (iv) determinations of the effective life of the resource management plans taking into consideration a change in or a transfer of the ownership or operation of the agricultural land, a material change in the agricultural operations, issuance of a new or modified total maximum daily load (TMDL) implementation plan for the Chesapeake Bay or other local total maximum daily load water quality requirements, and a determination pursuant to Chapter 4 (§ 3.2-400 et seq.) of Title 3.2 that an agricultural activity on the land is creating or will create pollution; (v) factors that necessitate renewal or new plan development; and (vi) a means to determine full implementation and compliance with the plans including reporting and verification;

3. Provide for a process by which an on-farm assessment of all reportable best management practices currently in place, whether as part of a cost-share program or through voluntary implementation, shall be conducted to determine their adequacy in achieving needed on-farm nutrient, sediment, and bacteria reductions;

4. Include agricultural best management practices sufficient to implement the Virginia Chesapeake Bay TMDL Watershed Implementation Plan and other local total maximum daily load water quality requirements of the Commonwealth; and

5. Specify that the required components of each resource management plan shall be based upon an individual on-farm assessment. Such components shall comply with on-farm water quality objectives as set forth in subdivision B 4, including best management practices identified in this subdivision and any other best management practices approved by the Board or identified in the Chesapeake Bay Watershed Model or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan.

a. For all cropland or specialty crops such components shall include the following, as needed and based upon an individual on-farm assessment:

(1) A nutrient management plan that meets the nutrient management specifications developed by the Department;

(2) A forest or grass buffer between cropland and perennial streams of sufficient width to meet water quality objectives and consistent with Natural Resources Conservation Service standards and specifications;

(3) A soil conservation plan that achieves a maximum soil loss rate of "T," as defined by the Natural Resources Conservation Service; and

(4) Cover crops meeting best management practice specifications as determined by the Natural Resources Conservation Service or the Virginia Agricultural Best Management Practices Cost-Share Program.

b. For all hayland, such components shall include the following, as needed and based upon an individual on-farm assessment:

(1) A nutrient management plan that meets the nutrient management specifications developed by the Department;

(2) A forest or grass buffer between cropland and perennial streams of sufficient width to meet water quality objectives and consistent with Natural Resources Conservation Service standards and specifications; and

(3) A soil conservation plan that achieves a maximum soil loss rate of "T," as defined by the Natural Resources Conservation Service.

c. For all pasture, such components shall include the following, as needed and based upon an individual on-farm assessment:

(1) A nutrient management plan that meets the nutrient management specifications developed by the Department;

(2) A system that limits or prevents livestock access to perennial streams; and

(3) A pasture management plan or soil conservation plan that achieves a maximum soil loss rate of "T," as defined by the Natural Resources Conservation Service.

2011, c. 781.

§ 10.1-104.9. Regulations under this article.

Regulations adopted by the Board for the enforcement of this article shall be subject to the requirements set out in §§ 2.2-4007.03, 2.2-4007.04, 2.2-4007.05, and 2.2-4026 through 2.2-4030 of the Administrative Process Act (§ 2.2-4000 et seq.), and shall be published in the Virginia Register of Regulations. The Board shall convene a stakeholder group to assist in development of these regulations, with representation from agricultural and environmental interests as well as Soil and Water Conservation Districts. All other provisions of the Administrative Process Act shall not apply to the adoption of any regulation pursuant to this article. After the close of the 60-day comment period, the

Board may adopt a final regulation, with or without changes. Such regulation shall become effective 15 days after publication in the Virginia Register of Regulations, unless the Board has withdrawn or suspended the regulation or a later date has been set by the Board. The Board shall also hold at least one public hearing on the proposed regulation during the 60-day comment period. The notice for such public hearing shall include the date, time, and place of the hearing.

2011, c. 781.

Article 2 - BOARD OF CONSERVATION AND RECREATION

§ 10.1-105. Board of Conservation and Recreation.

The Board of Conservation and Recreation shall be reorganized and is established as a policy board in the executive branch in accordance with § 2.2-2100 and shall consist of 12 members to be appointed by the Governor. The Board shall be the successor to the Board on Conservation and Development of Public Beaches and the Virginia State Parks Foundation. The members of the Board shall initially be appointed for terms of office as follows: three for a one-year term, three for a two-year term, three for a three-year term, and three for a four-year term. The Governor shall designate the term to be served by each appointee at the time of appointment. Appointments thereafter shall be made for four-year terms. No person shall serve more than two consecutive full terms. Any vacancy shall be filled by the Governor for the unexpired term. All terms shall begin July 1. Board members shall serve at the pleasure of the Governor. In making appointments, the Governor shall endeavor to select persons suitably qualified to consider and act upon the various special interests and problems related to the programs of the Department. The Board may appoint subcommittees of not less than three to consider and deal with special interests and problems related to programs of the Department.

Code 1950, § 10-3; 1954, c. 487; 1958, c. 427; 1966, cc. 477, 510; 1984, c. 750; 1988, c. 891; 1989, c. 656; 1991, c. 84; 2003, cc. 79, 89.

§ 10.1-106. Officers; meetings; quorum.

The Board shall elect one of its members chairman, and another as vice-chairman. The Director or his designee shall serve as executive secretary to the Board.

The Board shall meet at least three times a year on the call of the chairman or the Director. The vice-chairman shall fill the position of chairman in the event the chairman is not available. A majority of the members of the Board shall constitute a quorum of the Board.

Code 1950, §§ 10-4, 10-5; 1958, c. 427; 1968, c. 126; 1988, c. 891; 1991, c. 84; 2003, cc. 79, 89.

§ 10.1-107. General powers and duties of the Board.

A. The Board shall advise the Governor and the Director on activities of the Department. Upon the request of the Governor, or the Director, the Board shall institute investigations and make recommendations.

The Board shall formulate recommendations to the Director concerning:

1. Requests for grants or loans pertaining to outdoor recreation.

2. Designation of recreational sites eligible for recreational access road funds.

3. Designations proposed for scenic rivers, scenic highways, and Virginia byways.

4. Acquisition of real property by fee simple or other interests in property for the Department including, but not limited to, state parks, state recreational areas, state trails, greenways, natural areas and natural area preserves, and other lands of biological, environmental, historical, recreational or scientific interest.

5. Acquisition of bequests, devises and gifts of real and personal property, and the interest and income derived therefrom.

6. Stage one and stage two plans, master plans, and substantial acquisition or improvement amendments to master plans as provided in § 10.1-200.1.

B. The Board shall have the authority to promulgate regulations necessary for the execution of the Public Beach Conservation and Development Act, Article 2 (§ 10.1-705 et seq.) of Chapter 7 of this title.

C. The Board shall assist the Department in the duties and responsibilities described in Subtitle I (§ 10.1-100 et seq.) of Title 10.1.

D. The Board is authorized to conduct fund-raising activities as deemed appropriate and will deposit such revenue into the State Parks Projects Fund pursuant to subsection C of § 10.1-202.

E. The Board shall advise the Governor and the Director concerning the protection or management of the Virginia Scenic Rivers System as defined in § 10.1-400. Upon the request of the Governor, or the Director, the Board shall institute investigations and make recommendations. The Board shall have general powers and duties to (i) advise the Director on the appointment of Scenic River Advisory Committees or other local or regional committees pursuant to § 10.1-401; (ii) formulate recommendations concerning designations for proposed scenic rivers or extensions of existing scenic rivers; (iii) consider and comment to the Director on any federal, state, or local governmental plans to approve, license, fund, or construct facilities that would alter any of the assets that qualified the river for scenic designation; (iv) assist the Director in reviewing and making recommendations regarding all planning for the use and development of water and related land resources including the construction of impoundments, diversions, roadways, crossings, channels, locks, canals, or other uses that change the character of a stream or waterway or destroy its scenic assets, so that full consideration and evaluation of the river as a scenic resource will be given before alternative plans for use and development are approved; (v) assist the Director in preserving and protecting the natural beauty of the scenic rivers, assuring the use and enjoyment of scenic rivers for fish and wildlife, scenic, recreational, geologic, historic, cultural, or other assets, and encouraging the continuance of existing agricultural, horticultural, forestal and open space land and water uses; (vi) advise the Director and the affected local jurisdiction on the impacts of proposed uses of each scenic river and its related land resources; and

(vii) assist local governments in solving problems associated with the Virginia Scenic Rivers System, in consultation with the Director.

Code 1950, § 10-12; 1958, c. 427; 1962, c. 355; 1984, c. 750; 1988, c. 891; 1991, c. 84; 1998, c. 780; 2003, cc. 79, 89; 2005, cc. 25, 102; 2009, c. 856; 2012, cc. 803, 835.

Article 3 - DISPOSITION OF DEPARTMENT LANDS

§ 10.1-108. Definitions.

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

"Environment" means the natural, scenic, scientific and historic attributes of the Commonwealth.

"Exploration" means the examination and investigation of land for the purpose of locating and determining the extent of minerals, by excavating, drilling, boring, sinking shafts, sinking wells, driving tunnels, or other means.

"Mineral" means petroleum, natural gas, coal, ore, rock and any other solid chemical element or compound which results from the inorganic process of nature. For the purposes of this article, the word mineral shall not include timber.

1978, c. 835, § 10-17.113; 1988, c. 891.

§ 10.1-109. Conveyance or lease of lands and other properties.

A. The Director is authorized, subject to the consent and approval of the Governor and the General Assembly, following review as to form and content by the Attorney General and the provisions of this article, to convey, lease or demise to any person for consideration, by proper deed or other appropriate instrument signed and executed by the Director, in the name of the Commonwealth: (i) any lands or other properties held for general recreational or other public purposes by the Department, for the Commonwealth; (ii) any lands over which the Department has supervision and control, or any part of such lands; or (iii) any right, interest or privilege with respect to such lands. The Director, subject to the consent and approval of the Governor, may renew any such lease, contract or agreement without the consent and approval of the General Assembly. Whenever land is acquired by purchase or otherwise for public recreation and conservation purposes under the administration of the Department, the Director is authorized to lease the land or any portion of it to the owner from whom the land is acquired upon terms and conditions in the public interest. No lease granted under this section shall be for an initial term longer than ten years, but any such lease may contain provisions for lease renewals, either contingent or automatic at the discretion of the Director, for a like period upon the same terms and conditions as originally granted. If written notice of termination is received by the Director from the lessee or if use of the lease is in fact abandoned by the lessee at any time prior to the end of the initial term or any renewal, the Director may immediately terminate the lease.

B. The Director is authorized to lease state-owned housing under the control of the Department to state employees. Such leases shall be approved as to form and content by the Attorney General and the Department of General Services. The leasing of Department-controlled housing to state

employees shall be for the purposes of providing security and operational efficiencies to property of the Department and shall not cause the property to be considered surplus to the agency's need. If the Director determines that the availability of state-owned housing is inadequate to meet the onsite security and operational efficiencies requirements for Department-owned property, he may lease residential property not owned by the Commonwealth from prospective landlords for the purposes of subleasing to state employees who otherwise qualify for leasing state-owned housing. Such leases and subleases shall be approved by the Director.

1978, c. 835, § 10-17.114; 1980, c. 451; 1984, c. 739; 1987, c. 453; 1988, c. 891; 1991, c. 461; 2008, c. 22.

§ 10.1-110. Easements to governmental agencies and public service corporations.

A. The Director is authorized, subject to the consent and approval of the Governor following review as to form and content by the Attorney General, to grant to any governmental agency, political subdivision, public utility company, public service corporation, public service company or authority for consideration by proper deed or other appropriate instrument signed and executed by the Director in the name of the Commonwealth, any easement over, upon and across any lands or other properties held by the Commonwealth or over which it has supervision and control, provided that the easement is consistent with and not in derogation of the general purpose for which the land or other property is held. No easement shall be granted for an initial term longer than ten years, but may contain provisions for renewals either contingent or automatic at the discretion of the Director, for a like period on the same terms and conditions as originally granted. If written notice of termination is received by the Director from the grantee or if use of the easement is in fact abandoned by the grantee at any time prior to the end of the initial term or any renewal, the Director may immediately terminate the easement. If the Department amends its master site plan to include buildings, structures or improvements on or in the vicinity of any easement granted under this section, the Director reserves the right to require, upon written notice given 180 days in advance, the relocation of the easement at the expense of the grantee of the easement.

B. The relocation requirement of subsection A shall not apply to any easement granted by the Director to the Virginia Department of Transportation.

1978, c. 835, § 10-17.114; 1980, c. 451; 1984, c. 739; 1987, c. 453; 1988, c. 891; 1991, c. 360.

§ 10.1-111. Removal of minerals.

The Director, with the approval of the Governor, is authorized to make and execute leases, contracts or deeds in the name of the Commonwealth, for the removal or mining of minerals that may be found in Departmental lands whenever it appears to the Director that it would be in the best interest of the Commonwealth to dispose of these minerals. Before any deed, contract or lease is made or executed, it shall be approved as to form by the Attorney General, and bids therefor shall be received after notice by publication once each week for four successive weeks in two newspapers of general circulation. The Director shall have the right to reject any or all bids and to readvertise for bids. The accepted bidder shall give bond with good and sufficient surety to the satisfaction of the Director, and in any

amount that the Director may fix for the faithful performance of all the conditions and covenants of the lease, contract or deed. The proceeds arising from any contract, deed, or lease shall be deposited into the state treasury to the credit of the State Park Conservation Resources Fund established in subsection A of § 10.1-202.

1978, c. 835, § 10-17.114; 1980, c. 451; 1984, c. 739; 1987, c. 453; 1988, c. 891; 2003, cc. 79, 89.

§ 10.1-112. Capital improvement projects.

The Director is authorized to make and execute leases and contracts in the name of the Commonwealth for the development and operation of revenue-producing capital improvement projects in Virginia state parks upon the written approval of the Governor. Prior to approval, the Governor shall consider the written recommendation of the Director of the Department of General Services and the Attorney General shall review such leases and contracts as to form.

Any contract or lease for the development and operation of the capital improvement project shall be in accordance with the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et seq.). The accepted bidder shall give a performance bond for the construction, operation and maintenance of the project with good and sufficient surety in an amount fixed by the Director for the faithful performance of the conditions and covenants of such lease or contract.

Such lease or contract, with an initial term not exceeding 30 years, shall be subject to terms, conditions, and limitations as the Director may prescribe and may be renewed with the approval of the Director. The proceeds arising from a contract or lease executed pursuant to this section shall be paid into the State Park Conservation Resources Fund established in subsection A of § 10.1-202.

1987, c. 835, § 10-17.114; 1980, c. 451; 1984, c. 739; 1987, c. 453; 1988, c. 891; 1998, c. 168; 2003, cc. 79, 89.

§ 10.1-113. Sale of trees.

For the purpose of managing Departmental lands or maintaining the production of forest products in Departmental lands, the Director, upon the recommendation of the State Forester, may designate and appraise trees to be cut under the principles of scientific forest management, and may sell them for not less than their appraised value. When the appraised value of the trees to be sold is more than $50,000, the Director, before selling them, shall receive bids, after notice by publication once a week for two weeks in two newspapers of general circulation; but the Director shall have the right to reject any and all bids and to readvertise for bids. The proceeds arising from the sale of the timber and trees from state park lands shall be paid into the State Park Conservation Resources Fund established in subsection A of § 10.1-202. The proceeds arising from the sale of the timber and trees from natural area preserves owned by the Department in fee simple shall be paid into the Natural Area Preservation Fund established in § 10.1-215.

1988, c. 891; 2003, cc. 79, 89; 2007, c. 158.

§ 10.1-114. Commemorative facilities and historic sites management; duties of Director.

In order to further public understanding and appreciation of the persons, places and events that contributed substantially to the development and enhancement of our Commonwealth's and nation's democratic and social values and ideals and in order to encourage, stimulate and support the identification, protection, preservation and rehabilitation of the Department's significant historic, architectural and archaeological sites, the Director has the following duties:

1. To ensure that Departmental historical and cultural facilities are suitable for public, patriotic, educational and recreational assemblies and events;

2. To plan, establish, construct, operate, maintain and manage historic museums, commemorative memorials and other facilities as directed by acts of the General Assembly;

3. To acquire lands, property and structures deemed necessary to the purposes of this chapter by purchase, lease, gift, devise or condemnation proceedings. The title to land and property acquired shall be in the name of the Commonwealth. In the exercise of the power of eminent domain granted under this section, the Director may proceed in the manner provided in Chapter 3 (§ 25.1-300 et seq.) of Title 25.1; and

4. To lease acquired property to any person, association, firm or corporation for terms and conditions determined by the Director with the Governor's consent.

1989, c. 656; 2003, c. 940.

§ 10.1-114.1. Directory of cultural heritage sites.

A. The Director is authorized to develop a state directory of cultural heritage facilities and sites. The directory shall recognize commemorative and historic facilities and sites that interpret significant aspects of national, state, or regional culture or history. Sites included in the directory shall not be owned or operated by state agencies.

B. Owners or managers of a potential commemorative or historic facility desiring to be included in the directory of cultural heritage sites shall submit an application to the Department. To be eligible for inclusion in the directory, the application shall include a discussion of the cultural and historic significance of the facility or site; a description of how the facility or site is staffed and managed; information on any oversight or advisory boards, including their mission statements and goals; information regarding the accessibility of the site to persons with special needs; information confirming the availability of the facility or site to the public for tours and educational or recreational programs on a regular basis; letters of support from local governments, chambers of commerce, tourism bureaus, or other supporting entities; and other information as the Department determines to be necessary. The Department may develop additional qualification criteria and application materials that may be necessary to implement the registry program. Such criteria may be adopted by the Director after considering the recommendations of the Board of Conservation and Recreation.

C. The Director shall evaluate whether the facility or site qualifies for inclusion in the directory. In evaluating the facility or site, the Director shall consult with the Department of Historic Resources, the

Virginia Tourism Corporation, and other state and federal agencies when such consultation would benefit the evaluation.

D. The Director shall present any findings to the Board for its recommendation. Upon the favorable recommendation of the Board, the Director may designate a facility or site for inclusion in the directory with the Governor's written approval.

E. The Department shall maintain the directory of cultural heritage facilities and sites on its website and actively promote those facilities or sites.

2010, c. 29.

Article 4 - CONSERVATION OFFICERS

§ 10.1-115. Appointment of conservation officers; qualifications; oath.

A. The Director, when he deems it necessary, may request the Governor to commission an individual designated by the Director to act as a conservation officer of the Commonwealth. Upon concurring with the Director's request, the Governor shall direct the Secretary of the Commonwealth to issue a conservation officer commission to the designated individual. The Secretary of the Commonwealth shall deliver a copy of the commission to the Director. Any individual so commissioned shall hold his commission during his term of employment with the Department, subject to the provisions of § 10.1-118.

B. The Director, upon the request of the Breaks Interstate Park Commission, may request the Governor to commission an individual who meets the requirements of § 10.1-120 and is designated by the Director to act as a conservation officer of the Commonwealth. Upon concurring with the Director's request, the Governor shall direct the Secretary of the Commonwealth to issue a conservation officer commission to the designated individual. The Secretary of the Commonwealth shall deliver a copy of the commission to the Director.

C. To be qualified to receive a conservation officer commission, a person shall (i) be at least 21 years of age and (ii) have graduated from high school or obtained an equivalent diploma.

D. Each conservation officer shall qualify before the clerk of the circuit court of the city or county in which he resides, or in which he first is assigned duty, by taking the oaths prescribed by law. An employee of the Breaks Interstate Park Commission shall qualify before the clerk of the circuit court of Dickenson County.

E. The Director may designate certain conservation officers to be special conservation officers. Special conservation officers shall have the same authority and power as sheriffs throughout the Commonwealth to enforce the laws of the Commonwealth.

1994, c. 205; 2015, cc. 64, 489.

§ 10.1-116. Jurisdiction of conservation officers.

Conservation officers shall have jurisdiction throughout the Commonwealth on all Department lands and waters and upon lands and waters under the management or control of the Department, on property of the United States government or a department or agency thereof on which the Commonwealth has concurrent jurisdiction and is contiguous with land of the Department or on which the Department has a management interest, on property operated by the Breaks Interstate Park Commission within the Commonwealth of Virginia with the written agreement of the Commission, on a property of another state agency or department whose property is contiguous with land of the Department, and in those local jurisdictions in which mutual aid agreements have been established pursuant to § 15.2-1736.

Special conservation officers appointed pursuant to § 10.1-115 shall have jurisdiction throughout the Commonwealth.

1994, c. 205; 2005, c. 87; 2015, cc. 64, 489.

§ 10.1-117. Powers and duties of conservation officers.

A. It shall be the duty of all conservation officers to uphold and enforce the laws of the Commonwealth, the regulations of the Department, and the rules and regulations of the Breaks Interstate Park Commission.

B. Commissioned conservation officers shall be law-enforcement officers and shall have the power to enforce the laws of the Commonwealth, the regulations of the Department and the collegial bodies under administrative support of the Department, and the rules and regulations of the Breaks Interstate Park Commission. If requested by the chief law-enforcement officer of the locality, conservation officers shall coordinate the investigation of felonies with the local law-enforcement agency.

1994, c. 205; 2005, c. 88; 2015, cc. 64, 489.

§ 10.1-118. Decommissioning of conservation officers.

Upon separation from the Department or the Breaks Interstate Park Commission, incapacity, death, or other good cause, the Director may recommend in writing the decommissioning of any conservation officer to the Governor. Upon concurring with the Director's request, the Governor shall direct the Secretary of the Commonwealth to issue a certificate of decommissioning to the conservation officer. The Secretary of the Commonwealth shall deliver a copy of the certificate to the Director. Upon receipt of the decommissioning certificate, the Director shall ensure that the certificate is recorded at the office of the clerk of the circuit court of any city or county in which the individual took his oath of office.

1994, c. 205; 2015, cc. 64, 489.

§ 10.1-119. Defense of conservation officer of the Department prosecuted on criminal charges.

If any conservation officer shall be brought before any regulatory body, summoned before any grand jury, investigated by any other law-enforcement agency, or arrested or indicted or otherwise prosecuted on any charge arising out of any act committed in the discharge of his official duties, the Director may employ special counsel approved by the Attorney General to defend such officer. Upon a finding that (i) the officer did not violate a law or regulation resulting from the act that was the subject of the investigation and (ii) the officer will not be terminated from employment as the result of such act,

the Director shall arrange for payment for the special counsel employed. The 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 administration of the Department of Conservation and Recreation or the Breaks Interstate Park Commission as may be applicable.

2007, c. 595; 2015, cc. 64, 489.

§ 10.1-120. Commissioning of Breaks Interstate Park Commission employees as conservation officers.

A. The Director shall ensure that an employee of the Breaks Interstate Park Commission whom the Commission recommends for commissioning as a conservation officer in accordance with subsection B of § 10.1-115 meets the minimum qualifications for law-enforcement officers set out in § 15.2-1705, is subject to the minimum training standards set out in § 9.1-114, abides by the Department's law-enforcement in-service training requirements, and abides by the law-enforcement directives of the Department unless exceptions by the Department are granted in writing. For the purposes of law-enforcement directives, the Breaks Interstate Park shall be treated as a Virginia State Park.

B. The Commission shall bear the expenses associated with training and equipping a Commission employee as a conservation officer to Department standards unless the Department agrees otherwise.

2015, cc. 64, 489.

Chapter 2 - PARKS AND RECREATION

Article 1 - STATE PARKS

§ 10.1-200. Duties related to parks and outdoor recreation; additional powers.

To facilitate and encourage the public use of parks and recreational areas, to further take advantage of the positive economic impact of outdoor recreational facilities to localities and the Commonwealth, to foster the upkeep and maintenance of such resources, and to provide additional means by which the Governor and the General Assembly may determine necessary general fund appropriations and the need for other funding measures, the Department shall establish and implement a long-range plan for acquisition, maintenance, improvement, protection and conservation for public use of those areas of the Commonwealth best adapted to the development of a comprehensive system of outdoor recreational facilities in all fields, including, but not limited to: parks, forests, camping grounds, fishing and hunting grounds, scenic areas, waters and highways, boat landings, beaches and other areas of public access to navigable waters. The Department shall have the power and duty to:

1. Administer all funds available to the Department for carrying out the purposes of this chapter, and to disburse funds to any department, commission, board, agency, officer or institution of the Commonwealth, or any political subdivision thereof or any park authority.

2. Study and appraise on a continuing basis the outdoor recreational needs of the Commonwealth; assemble and disseminate information on outdoor recreation; and prepare, maintain and keep up-to-

date a comprehensive plan for the development of outdoor recreational facilities of the Commonwealth.

3. Establish and promote standards for outdoor recreational facilities; encourage and assist in the coordination of federal, state, and local recreational planning; aid and advise various state institutions in the use of existing state parks and similar recreational facilities; work with the appropriate state agencies to develop areas for multiple recreational use, including, but not limited to, traditional uses such as hunting, fishing, hiking, swimming, and boating.

4. Study and develop plans and, upon request, provide assistance regarding the establishment and implementation of recreational programs for state institutions, agencies, commissions, boards, officers, political subdivisions, and park authorities.

5. Assist upon request any department, commission, board, agency, officer or institution of the Commonwealth or any political subdivision thereof or any park authority in planning outdoor recreational facilities in conformity with its respective powers and duties and encourage and assist in the coordination of federal, state and local recreational planning.

6. Apply to any appropriate agency or officer of the United States for participation in or receipt of aid from any federal program respecting outdoor recreation, and in respect thereto, enter into contracts and agreements with the United States or any appropriate agency thereof; keep financial and other records relating to contracts and agreements with the United States or any appropriate agency thereof, and furnish appropriate officials and agencies of the United States reports and information necessary to enable the officials and agencies to perform their duties under federal programs respecting outdoor recreation.

7. Act either independently or jointly with any department, commission, board, agency, officer or institution of the Commonwealth or any political subdivision thereof or any park authority to carry out the Department's powers and duties; and coordinate its activities with and represent the interests of the above entities having interests in the planning, maintenance, improvement, protection and conservation of outdoor recreation facilities.

8. Develop a standard against which the public can determine the extent to which the Commonwealth is meeting park and recreational needs. The standard shall be based on park usage, population trends and densities, and outdoor recreational facility demands. The standard shall be expressed in terms of acres and facilities needed on a regional and a statewide level to serve existing and projected needs and conservation goals. In the comprehensive plan cited in subsection 2 of this section, the Department shall report on (i) the development of the standard; (ii) where the Commonwealth's park system falls short of, meets or exceeds the standard; and (iii) the methodology used for determining clause (ii).

1984, c. 739, §§ 10-21.3:3, 10-21.3:5; 1988, c. 891; 1998, c. 780; 2004, c. 58.

§ 10.1-200.1. State park master planning.

A. The Department shall undertake a master planning process (i) for all existing state parks, (ii) following the substantial acquisition of land for a new state park, and (iii) prior to undertaking substantial improvements to state parks. A master plan shall be considered a guide for the development, utilization and management of a park and its natural, cultural and historic resources and shall be adhered to closely. Each plan shall be developed in stages allowing for public input.

Stage one of the plan shall include the development of a characterization map indicating, at a minimum, boundaries, inholdings, adjacent property holdings, and other features such as slopes, water resources, soil conditions and types, natural resources, and cultural and historic resources. The stage one plan shall include a characterization of the potential types of uses for different portions of the parks and shall provide a narrative description of the natural, physical, cultural and historic attributes of the park. The stage one plan shall include the specific purposes for the park and goals and objectives to support those purposes.

Upon completion of a stage one plan, a stage two plan shall be developed by the Department which shall include the potential size, types and locations of facilities and the associated infrastructure including roads and utilities, as applicable. Proposed development of any type shall be in keeping with the character of existing improvements, if appropriate, and the natural, cultural and historic heritage and attributes of the park. The stage two plan shall include a proposed plan for phased development of the potential facilities and infrastructure. The Department shall project the development costs and the operational, maintenance, staffing and financial needs necessary for each of the various phases of park development. Projections shall also be made for the park's resource management needs and related costs. The projections shall be made part of the stage two plan.

Upon completion of the stage two plan, the stage one and stage two plans along with supporting documents shall be combined to form a master plan for the park. Development of a park shall not begin until the master plan has been reviewed by the Board of Conservation and Recreation and adopted by the Director.

B. All members of the General Assembly shall be given notice of public meetings and, prior to their adoption, the availability for review of stage one, stage two and master plans and proposed amendments for substantial improvements.

C. The master planning process shall not be considered an impediment to the acquisition of inholdings or adjacent properties. Such properties, when acquired, shall be incorporated into the master plan and their uses shall be amended into the master plan.

D. Stage one and stage two plans shall be considered complete following review and adoption by the Director. Stage one and stage two plans may only be adopted by the Director following public notice and a public meeting. The Director may make nonsubstantial amendments to master plans following public notice. A master plan or a substantial amendment to a master plan may only be adopted by the Director after considering the recommendations of the Board of Conservation and Recreation following public notice and a public meeting.

E. The Department shall solicit and consider public comment in the development of the stage one and two plans as well as the master plan and any amendments thereto. Such solicitation shall include reasonable notice to appropriate trade associations and private businesses within a 10-mile radius of the park that offer similar categories of service, including private campgrounds, marinas, and recreational facilities.

F. Master plans shall be reviewed and updated by the Department and the Board of Conservation and Recreation no less frequently than once every 10 years and shall be referenced in the Virginia Outdoors Plan.

G. Materials, documents and public testimony and input produced or taken for purposes of park planning prior to January 1, 1999, may be utilized in lieu of the process established in this section provided that it conforms with the requirements of this section and that a master plan shall be developed that conforms with this section which shall not be deemed complete until reviewed and approved in accordance with subsection D.

H. The planning process contained in this section satisfies the Department of General Services master planning requirements for lands owned or managed by the Department of Conservation and Recreation. The Department of Conservation and Recreation's Facility Development Plans shall continue to meet the Department of General Service's requirements.

I. For purposes of this section, unless the context requires a different meaning:

"Development of a park" means any substantial physical alterations within the park boundaries other than those necessary for the repair or maintenance of existing resources or necessary for the development of the master plan.

"Substantial acquisition" means the purchase of land valued at $500,000 or more or the acquisition of the major portion of land for a new state park whichever is less.

"Substantial improvement" means physical improvements and structures valued at $500,000 or more.

1998, c. 780; 2013, c. 43; 2015, cc. 185, 469.

§ 10.1-200.2. Littering in state parks; civil penalty.

No person shall improperly dispose of litter, as defined in § 10.1-1414, within a Virginia state park. In addition to any penalties that may be assessed under § 10.1-104 or § 33.2-802, any person in violation of this section may be assessed a civil penalty not to exceed $250. All civil penalties imposed under this section shall be deposited in the Conservation Resources Fund.

2001, c. 172.

§ 10.1-200.3. Admittance and parking in state parks; prohibitions; civil penalty.

A. No person shall make use of, gain admittance to, or attempt to use or gain admittance to the facilities in any state park for the use of which a charge is assessed by the Department, unless the person pays the charge or price established by the Department.

B. No owner or driver shall cause or permit a vehicle to stand:

1. Anywhere in a state park outside of designated parking spaces, except for a reasonable time in order to receive or discharge passengers; or

2. In any space in a state park designated for use by the handicapped unless the vehicle displays a license plate or decal issued by the Commissioner of the Department of Motor Vehicles, or a similar identification issued by a similar authority of another state or the District of Columbia, which authorizes parking in a handicap space.

C. Any person violating any provision of this section may, in lieu of any criminal penalty, be assessed a civil penalty of twenty-five dollars by the Department. Civil penalties assessed under this section shall be paid into the Conservation Resources Fund.

2001, c. 370.

§ 10.1-201. Acquisition of lands of scenic beauty, recreational utility or historical interest.

A. The Director is authorized to acquire by gift or purchase or by the exercise of the power of eminent domain, areas, properties, lands or any estate or interest therein, of scenic beauty, recreational utility, historical interest, biological significance or any other unusual features which in his judgment should be acquired, preserved and maintained for the use, observation, education, health and pleasure of the people of Virginia. Any acquisition shall be within the limits of any appropriation made by the General Assembly for the purchase of such properties, or of voluntary gifts or contributions placed at the disposal of the Department for such purposes.

B. The Director is authorized to institute and prosecute any proceedings in the exercise of the power of eminent domain for the acquisition of such properties for public use in accordance with Chapter 2 (§ 25.1-200 et seq.) of Title 25.1.

C. Before any property is purchased or acquired by condemnation, the Director may request the Attorney General to examine and report upon the title of the property, and it shall be the duty of the Attorney General to make such examination and report.

D. When any property is acquired by the Director under the provisions of this section without the aid of any appropriation made by the General Assembly and exclusively with the aid of gifts or contributions placed at the disposal of the Department for that purpose, he may place the property in the custody of the person or association making such gifts or contributions, or lease the property to such person or association, for a period not to exceed 99 years, upon terms and conditions approved by the Governor, which will best preserve and maintain such property for the use, observation, education, health or pleasure of the people of Virginia.

Code 1950, § 10-21; 1950, p. 394; 1984, c. 750; 1988, c. 891; 2003, c. 940.

§ 10.1-202. Gifts, funds, and fees designated for state parks; establishment of funds.

A. The State Park Conservation Resources Fund shall consist of all state park fees, fees from concessions, civil penalties assessed pursuant to § 10.1-200.2 and under § 10.1-200.3, all revenues associated with forest product sales on state parks pursuant to § 10.1-113, and all funds accruing from, on

account of, or to the use or management of state parks acquired or held by the Department. This special fund shall be noninterest bearing. The fund shall be under the direction and control of the Director and may be expended for the conservation, development, maintenance, and operations of state parks acquired or held by the Department. Unexpended portions of the fund shall not revert to the state treasury at the close of any fiscal year unless specified by an act of the General Assembly.

B. The State Park Acquisition and Development Fund shall consist of the proceeds from the sale of surplus property. This special fund shall be noninterest bearing. The fund shall be under the direction and control of the Director and shall be used exclusively for the acquisition and development of state parks. Unexpended portions of the fund shall not revert to the state treasury at the close of any fiscal year unless specified by an act of the General Assembly.

C. The State Park Projects Fund shall consist of all income, including grants from any source, gifts and bequests of money, securities and other property, and gifts and devises of real property or interests therein given or bequeathed to the Department for the conservation, development, maintenance, or operations of state parks. This special fund shall be interest bearing and any income earned from these gifts, bequests, securities or other property shall be deposited to the credit of the fund. This fund shall be under the control of the Director and may be expended with advice from the Board for the conservation, development, maintenance, or operations of state parks. Unexpended portions of the fund shall not revert to the state treasury at the close of any fiscal year unless specified by an act of the General Assembly.

D. The Director is authorized to receive and to sell, exchange, or otherwise dispose of or invest as he deems proper the moneys, securities, or other real or personal property or any interest therein given or bequeathed to the Department for any of the funds established under this section, unless such action is restricted by the terms of a gift or bequest. The Director may enter into contracts and agreements, as approved by the Attorney General, to accomplish the purposes of these funds. The Director may do any and all lawful acts necessary or appropriate to carry out the purposes for which the above funds were established.

E. These funds shall not include any gifts of money to the Virginia Land Conservation Foundation or other funds deposited in the Virginia Land Conservation Fund.

Code 1950, § 10-21.2; 1988, c. 891; 1992, c. 426; 1994, c. 391; 1996, cc. 677, 686; 1999, cc. 900, 906; 2001, cc. 172, 370; 2003, cc. 79, 89; 2007, c. 637; 2009, c. 856.

§ 10.1-202.1. Golden Passport established; free entry into state parks.

The Department of Conservation and Recreation shall establish a Golden Passport card that authorizes persons receiving social security disability payments to enter Virginia's state parks without having to pay an admittance or parking fee. Persons seeking such a card shall, upon the presentation of proof of receiving such disability payments, be issued a card by the Division of State Parks. The card shall remain valid during the time a person is receiving such payments.

1998, c. 778.

§ 10.1-202.2. Disabled Veteran's Passport established; free entry into state parks and discounted services.

The Department shall establish a Disabled Veteran's Passport that entitles the bearer to: (i) enter state parks in the Commonwealth without the payment of a parking or admission fee and (ii) receive a 50 percent discount on camping and swimming fees, picnic shelter rentals, and other Department-provided equipment rentals. The passport shall be issued upon request to a veteran of the armed forces of the United States with a letter from the U.S. Department of Veterans Affairs, or from the military service that discharged the veteran, certifying that such veteran has a service-connected disability rating of 100 percent. The passport shall be valid for as long as the determination of the 100 percent service-connected disability by the U.S. Department of Veterans Affairs remains in effect.

2009, c. 560.

§ 10.1-203. Establishment, protection and maintenance of Appalachian Trail.

A. The Appalachian Trail shall be developed and administered primarily as a footpath, consonant with the provisions of the National Trails Systems Act applicable to the Appalachian Trail as part of the National Scenic Trails System, and its natural scenic beauty shall be preserved insofar as is practicable. The use of motorized vehicles by the general public along the trail is prohibited, and violation of this prohibition shall constitute a Class 1 misdemeanor. However, the owner of private land over which the trail passes may use or authorize use of motorized vehicles on or across the trail for purposes incident to ownership and management of the land and the Department may authorize use of the trail by motorized emergency vehicles. The Department may permit other uses of the trail and land acquired hereunder, by the owner of adjoining land or others, in a manner and for purposes that will not substantially interfere with the primary use of the trail. Furthermore, the Department may grant temporary or permanent rights-of-way across lands acquired under this section, under terms and conditions deemed advisable. Nothing in this section shall limit the right of the public to pass over existing public roads which are part of the trail, or prevent the Department from performing work necessary for forest fire prevention and control, insect, pest and disease control, and the removal of damage caused by natural disaster. The Department may enter into cooperative agreements with agencies of the federal government or with private organizations to provide for the maintenance of the trail. A person who has granted a right-of-way for the trail across his land, or his successor in title, shall not be liable to any user of the trail for injuries suffered on that portion of the trail unless the injuries are caused by his willful or wanton misconduct.

B. The Department is authorized to (i) enter into written cooperative agreements with landowners, private organizations and individuals and (ii) acquire by agreement, gift or purchase land, rights-of-way and easements for the purpose of establishing, protecting and maintaining a walking trail right-of-way across the Commonwealth, under such terms and conditions, including payment by the Department of property taxes on trail lands or property so acquired or subject to such use, as shall protect the interests of the actual or adjacent landowners or land users and as shall further the purposes of this section. Any department or agency of the Commonwealth, or any political subdivision, may transfer to

the Department land or rights in land for these purposes, on terms and conditions as agreed upon, or may enter into an agreement with the Department providing for the establishment and protection of the trail.

1971, Ex. Sess., c. 136, § 10-21.3:1; 1972, c. 413; 1984, cc. 739, 750; 1988, c. 891.

§ 10.1-204. Statewide system of trails.

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

"Other power-driven mobility device" means any mobility device powered by batteries, fuel, or other engines, whether or not designed primarily for use by individuals with mobility disabilities, that is used by individuals with mobility disabilities for the purpose of locomotion, including golf cars, electronic personal assistive mobility devices (EPAMDs), or any mobility device designed to operate in areas without defined pedestrian routes, but that is not a wheelchair within the meaning of this section.

"Wheelchair" means a manually-operated or power-driven device designed primarily for use by an individual with a mobility disability for the main purpose of locomotion.

B. The Department is authorized to enter into such agreements and to acquire interests as may be necessary to establish, maintain, protect, and regulate a statewide system of trails in order to provide for the ever-increasing outdoor recreational needs of an expanding population, and in order to promote public access to, travel within, and enjoyment and appreciation of the outdoor, natural, and remote areas of the Commonwealth. Notwithstanding any other provision of law, the Department shall not develop, establish, or extend any system of trails, including linear parks or greenways, in any county having the county manager form of government, unless it has submitted to the appropriate local agency, commission, or board, a plan of development, where such plan is required by local ordinance, for the proposed system of trails.

C. The statewide system of trails shall be composed of:

1. Scenic trails so located as to provide maximum potential for the appreciation of natural areas and for the conservation and enjoyment of the significant scenic, historic, natural, ecological, geological, or cultural qualities of the areas through which such trails may pass;

2. Recreation trails to provide a variety of outdoor recreation uses in or reasonably accessible to urban areas; and

3. Connecting trails or side trails to provide additional points of public access to recreation trails or scenic trails, or to provide connections between such trails, or to provide access from urban areas to major outdoor recreation sites.

D. Each trail shall be limited to foot, horse, or nonmotorized bicycle use, or a combination thereof, as deemed appropriate by the Department. The use of motorized vehicles by the public shall be prohibited along any of the scenic, recreation, or connecting or side trails. This statewide system of trails may contain, at the discretion of the Department, camping sites, shelters, and related public-use and management facilities, which will not substantially interfere with the nature and purposes of the trails.

E. Nothing in this section shall be construed to prohibit the Department from (i) allowing the use of wheelchairs or other power-driven mobility devices by disabled individuals on the statewide system of trails or (ii) requiring a user of an other power-driven mobility device to provide a credible assurance that the mobility device is required because of the person's disability, in accordance with the federal Americans with Disabilities Act of 1990 (P.L. 101-336, 104 Stat. 327) and other applicable state and federal laws.

Notwithstanding any provision to the contrary, the Department is authorized to permit, in accordance with applicable state and federal laws, the operation of electric power-assisted bicycles and electric personal assistive mobility devices as defined in § 46.2-100 on any bicycle path or trail designated by the Department for such use.

1971, Ex. Sess., c. 136, § 10-21.3:1; 1972, c. 413; 1984, cc. 739, 750; 1988, c. 891; 1993, c. 755; 2012, c. 598.

§ 10.1-204.1. (Expires January 1, 2027) State Trails Advisory Committee established; report.

A. The State Trails Advisory Committee (the Committee) is hereby established as an advisory committee of the Department of Conservation and Recreation to assist the Commonwealth in developing and implementing a statewide system of attractive, sustainable, connected, and enduring trails for the perpetual use and enjoyment of the citizens of the Commonwealth and future generations. The Committee shall be appointed by the Director of the Department of Conservation and Recreation and shall be composed of a representative from the Department of Wildlife Resources, the Virginia Department of Transportation, the Virginia Outdoors Foundation, the U.S. Forest Service, and the U.S. National Park Service; the Virginia Director of the Chesapeake Bay Commission; and nonlegislative citizen members, including representatives from the Virginia Outdoors Plan Technical Advisory Committee and the Recreational Trails Advisory Committee and other individuals with technical expertise in trail creation, construction, maintenance, use, and management. The Committee shall meet at least twice each calendar year.

B. The Advisory Committee shall examine and provide recommendations regarding (i) options to close the gaps in a statewide system of trails as described in § 10.1-204; (ii) creative public and private funding strategies and partnerships to leverage resources to fund the development of trails; (iii) integrated approaches to promote and market trail values and benefits; (iv) the development of specialty trails, including concepts related to old-growth forest trails across the Commonwealth; (v) strategies to encourage and create linkages between communities and open space; (vi) strategies to foster communication and networking among trail stakeholders; (vii) strategies to increase tourism and commercial activities associated with a statewide trail system; (viii) strategies to enhance the involvement of organizations that promote outdoor youth activities, including the Boy Scouts of the U.S.A. and Girl Scouts of the U.S.A. and the 4-H program of the Virginia Cooperative Extension; and (ix) other practices, standards, statutes, and guidelines that the Director of the Department of Conservation and Recreation determines may enhance the effectiveness of trail planning across the Commonwealth,

including methods for receiving input regarding potential trail impacts upon owners of underlying or neighboring properties.

C. No later than October 1 of each year, the Director shall provide a status report on the work of the Committee to the Chairman of the House Committee on Agriculture, Chesapeake and Natural Resources; the Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources; and the Chairman and members of the Virginia delegation to the Chesapeake Bay Commission. The report shall include, (i) current and future plans for a statewide system of attractive, sustainable, connected, and enduring trails across the Commonwealth and (ii) any recommendations from the Committee that will be incorporated into the Virginia Outdoors Plan, which plan shall serve as the repository for recommendations from the Committee. The Virginia Outdoors Plan updates shall be used to capture and advance the concepts developed by the Committee.

D. Members of the Committee shall receive no compensation for their service and shall not be entitled to reimbursement for expenses incurred in the performance of their duties.

E. For the purposes of this section, "old-growth forest" means a forest ecosystem distinguished by trees older than 150 years and tree-related structures that naturally contribute to biodiversity of the forested ecosystems and provide habitat to native Virginia wildlife species, including wildlife species that have been approved for introduction by the Department of Wildlife Resources.

F. The provisions of this section shall expire on January 1, 2027.

2015, c. 461; 2020, cc. 314, 958.

§ 10.1-205. Management of False Cape State Park.

A. The Director shall adopt measures to safeguard the environment of False Cape State Park. These shall include, but not be limited to, the following:

1. Provisions to ensure that adequate drinking water and environmentally sound sewage disposal are provided for visitors to the Park;

2. Adequate measures to protect the dunes, wildlife, and sensitive areas of the Park;

3. Adequate measures to protect, wherever practicable, nesting areas of sea turtles, beach nesting birds, peregrine falcons, and other endangered species.

B. The Director shall be responsible for providing that law-enforcement, fire and rescue services are available for the Park.

C. The Director shall consider limiting visitors into the Park to less than 2,000 per day if such a lower limit is necessary to preserve the Park environment.

D. The Director shall consider further limiting visitors into the Park during certain portions of the year if such a limitation is necessary to preserve the environment of the Park and of the Back Bay National Wildlife Refuge.

E. No motor powered vehicle of any kind shall be permitted upon the land of False Cape State Park except as follows:

1. A public transportation system operated by the Department, or its licensee or designee, to transport not more than 2,000 persons per day into and out of the Park;

2. Official vehicles of the Commonwealth and of the City of Virginia Beach;

3. Vehicles engaged in the construction and maintenance of improvements within the Park authorized by the Commonwealth;

4. Police and emergency vehicles;

5. Vehicles for which the operators thereof have been issued permits (i) by the Department of Interior, prior to July 1, 1984, pursuant to Public Law 96-315 to travel through the Back Bay National Wildlife Refuge and (ii) by the Department to travel through the Park.

1984, c. 706, § 10-21.3:2; 1988, c. 891.

Article 1.1 - INTERSTATE PARKS

§ 10.1-205.1. Breaks Interstate Park Compact of 1954.

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

BREAKS INTERSTATE PARK COMPACT

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

Article I.

The Commonwealth of Kentucky and the Commonwealth of Virginia agree to create, develop and operate an interstate park to be known as the Breaks Interstate Park, which shall be located along the Russell Fork of the Levisa Fork of the Big Sandy River and on adjacent areas in Pike County, Kentucky, and Dickenson and Buchanan Counties, Virginia. Said park shall be of such area and of such character as may be determined by the Commission created by this Compact.

Article II.

There is hereby created the Breaks Interstate Park Commission, which shall be a body corporate with the power and duties set forth herein and such additional powers as may be conferred upon it by subsequent action of the appropriate authorities of Kentucky and Virginia. The Commission shall consist of the Director of the Virginia Department of Conservation and Recreation or his designee and the Commissioner of the Kentucky Department of Parks or his designee as voting, ex officio members, and three commissioners from each of the two states, each of whom shall be a citizen of the state he

shall represent. Members of the Commission shall be appointed by the Governor. Vacancies shall be filled by the Governor for the unexpired term. The term of the commissioners appointed by the Governor shall be for four years. Their successors shall be appointed for terms of four years each. Each commissioner shall hold office until his successor is appointed and qualified. An officer or employee of the State, a political subdivision or the United States government may be appointed a commissioner under this act.

Article III.

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

Article IV.

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

Article V.

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

required such reports as may be required by the laws of each Commonwealth or by the Governor thereof.

Article VI.

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

Article VII.

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

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

Article VIII.

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

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

§ 3. The Compact approved herein and other provisions of this act dependent thereon shall become effective upon the ratification and approval of the Compact by the General Assembly of the Commonwealth of Kentucky and upon approval of this Compact by the Congress of the United States.

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

1954, c. 37; 1964, c. 292; 1994, c. 622.

Article 2 - OUTDOOR RECREATION

§ 10.1-206. Repealed.

Repealed by Acts 1991, c. 84.

§ 10.1-207. Cooperation of other departments, etc.

All departments, commissions, boards, agencies, officers, and institutions of the Commonwealth, or any political subdivision thereof and park authorities shall cooperate with the Department in the preparation, revision and implementation of a comprehensive plan for the development of outdoor recreational facilities, and such local and detailed plans as may be adopted pursuant thereto.

1984, c. 739, § 10-21.3:6; 1988, c. 891.

§ 10.1-208. Acquisition of property; making property available for agricultural and timbering uses, outdoor and recreational uses.

A. The Director is authorized to acquire by gift or purchase (i) unrestricted fee simple title to tracts, (ii) fee simple title to such land subject to reservation of farming rights or timber rights or (iii) easements in gross or other interests in real estate as are designed to maintain the character of the land as open-space land. Whenever practicable in the judgment of the Director, real property acquired pursuant to this chapter shall be made available for agricultural and timbering uses which are compatible with the purposes of this chapter.

B. The Director is authorized to acquire, in the name of the Commonwealth, by gift or purchase, any real property or any interest therein, as the Director deems necessary for obtaining, maintaining, improving, protecting and conserving outdoor areas suitable for the development of a system of outdoor recreational facilities, and to transfer such property to other state agencies as provided in § 2.2-1150.

1984, c. 739, § 10-21.3:7; 1988, c. 891.

Article 3 - VIRGINIA NATURAL AREA PRESERVES ACT

§ 10.1-209. Definitions.

Whenever used or referred to in this article, unless a different meaning clearly appears from the text:

"Fund" means the Natural Area Preservation Fund.

"Dedication" means the transfer to the Commonwealth of an estate, interest, or right in a natural area by any manner authorized in § 10.1-213.

"Instrument of dedication" means any written document by which an estate, interest, or right in a natural area conveys formal dedication as a natural area preserve pursuant to the provisions of § 10.1-213.

"Natural area" means any area of land, water, or both land and water, whether publicly or privately owned, that retains or has reestablished its natural character, though it need not be completely natural and undisturbed; or which is important in preserving rare or vanishing flora, fauna, native ecological systems, geological, natural historical, scenic or similar features of scientific or educational value benefiting the citizens of the Commonwealth.

"Natural area preserve" means a natural area that has been dedicated pursuant to § 10.1-213.

"Natural heritage resources" means the habitat of rare, threatened, or endangered plant and animal species, rare or state significant natural communities or geologic sites, and similar features of scientific interest benefiting the welfare of the citizens of the Commonwealth.

"Program" means the Virginia Natural Heritage Program.

"Owner" means any individual, corporation, partnership, trust or association, and all governmental units except the state, its department, agencies or institutions.

"Registry" means an agreement between the Director and the owner of a natural area to protect and manage the natural area for its specified natural heritage resource values.

"System" means the state system of natural area preserves established under § 10.1-214.

1989, c. 553.

§ 10.1-210. Additional powers of the Department.

In addition to other powers conferred by law and subject to the provisions of this article, the Department shall have the power, which may be delegated by the Director:

1. To establish criteria for the selection, registration and dedication of natural areas and natural area preserves.

2. To purchase, lease or otherwise acquire in the name of the Commonwealth, using moneys from the Natural Area Preservation Fund, lands suitable for natural area preserves.

3. To acquire by gift, devise, purchase, or otherwise, absolutely or in trust, and to hold and, unless otherwise restricted by the terms of a gift or devise, to encumber, convey or otherwise dispose of, any real property, any estate or interests therein, or products on or derived from such real property, as may be necessary and proper in carrying into effect the provisions of this article.

4. To accept, hold and administer gifts and bequests of money, securities, or other property, absolutely or in trust, made for purposes of this article. Unless otherwise restricted by the terms of the gift or bequest, the Department may sell, exchange or otherwise dispose of such money, securities or other property given or bequeathed to the Department. The principal of such funds, together with the income and all revenues derived therefrom, shall be placed in the Natural Area Preservation Fund.

1989, c. 553.

§ 10.1-211. Additional duties of the Department.

In addition to other duties conferred by law, the Department shall, subject to the provisions of this article:

1. Preserve the natural diversity of biological resources of the Commonwealth.

2. Maintain a Natural Heritage Program to select and nominate areas containing natural heritage resources for registration, acquisition, and dedication of natural areas and natural area preserves.

3. Develop and implement a Natural Heritage Plan that shall govern the Natural Heritage Program in the creation of a system of registered and dedicated natural area preserves.

4. Publish and disseminate information pertaining to natural areas and natural area preserves.

5. Grant permits to qualified persons for the conduct of scientific research and investigations within natural area preserves.

6. Provide recommendations to the Commissioner of the Department of Agriculture and Consumer Services and to the Board of Agriculture and Consumer Services on species for listing under the Virginia Endangered Plant and Insect Act, prior to the adoption of regulations therefor.

7. Provide recommendations to the Executive Director of the Department of Wildlife Resources and to the Board of Wildlife Resources on species for listing under the Virginia Endangered Species Act, prior to the adoption of regulations therefor.

8. Cooperate with other local, state and federal agencies in developing management plans for real property under their stewardship that will identify, maintain and preserve the natural diversity of biological resources of the Commonwealth.

9. Provide for management, development and utilization of any lands purchased, leased or otherwise acquired and enforce the provisions of this article governing natural area preserves, the stewardship thereof, the prevention of trespassing thereon, or other actions deemed necessary to carry out the provisions of this article.

1989, c. 553; 2020, c. 958.

§ 10.1-212. Virginia Natural Heritage Program.

A. The Virginia Natural Heritage Program is hereby established and shall be administered by the Department.

B. For purposes of this Program the Department shall:

1. Produce an inventory of the Commonwealth's natural heritage resources, including their location and ecological status.

2. Maintain a natural heritage data bank of inventory data and other relevant information for ecologically significant sites supporting natural heritage resources. Information from this data bank will be made available to public agencies and may be made available to private institutions or individuals for environmental assessment and land management purposes.

3. Develop a Natural Heritage Plan which establishes priorities for the protection, acquisition and management of registered and dedicated natural areas and natural area preserves.

C. The Program shall include other functions as may be assigned by the Director for the registration, dedication, protection and stewardship of natural areas and natural area preserves.

1989, c. 553.

§ 10.1-213. Dedication of natural area preserves.

A. The Director may, in the name of the Department, accept the dedication of natural areas on lands deemed by the Director to qualify as natural area preserves under the provisions of this article. Natural area preserves may be dedicated by voluntary act of the owner. The owner of a qualified natural area may transfer fee simple title or other interest in land to the Commonwealth. Natural area preserves may be acquired by gift, grant, or purchase.

B. Dedication of a natural preserve shall become effective only upon acceptance of the instrument of dedication by the Director.

C. The instrument of dedication may:

1. Contain restrictions and other provisions relating to management, use, development, transfer, and public access, and may contain any other restrictions and provisions as may be necessary or advisable to further the purposes of this article;

2. Define, consistently with the purposes of this article, the respective rights and duties of the owner and of the Commonwealth and provide procedures to be followed in case of violations of the restrictions;

3. Recognize and create reversionary rights, transfers upon conditions or with limitations, and gifts over; and

4. Vary in provisions from one natural area preserve to another in accordance with differences in the characteristics and conditions of the several areas.

D. Public departments, commissions, boards, counties, municipalities, corporations, and institutions of higher education and all other agencies and instrumentalities of the Commonwealth and its political subdivisions are empowered to dedicate suitable areas within their jurisdiction as natural area preserves.

E. Subject to the approval of the Governor, the Commonwealth may enter into amendments to the instrument of dedication upon finding that the amendment will not permit an impairment, disturbance, use, or development of the area inconsistent with the provisions of this article. If the fee simple estate in the natural area preserve is not held by the Department under this article, no amendment may be made without the written consent of the owner of the other interests therein.

1989, c. 553.

§ 10.1-214. Virginia natural area preserves system established.

A state system of natural area preserves is hereby established and shall be called the Virginia Natural Area Preserves System. The system shall consist of natural area preserves dedicated as provided in § 10.1-213. Once dedicated, a natural area preserve shall be managed in a manner consistent with continued preservation of the natural heritage resources it supports.

1989, c. 553.

§ 10.1-215. Natural Area Preservation Fund established.

A. A fund consisting of general fund appropriations, gifts, bequests, devises, fees, lease proceeds, and funds accruing from, or attributable to, the use or management of state natural area preserves acquired or held by the Department known as the Natural Area Preservation Fund is hereby established.

B. Any funds remaining in such fund at the end of the biennium, including all appropriations, gifts, bequests, devises, fees, lease proceeds, and funds accruing from, or attributable to, the use or management of state natural area preserves acquired or held by the Department, and interest accruing thereon, shall not revert to the general fund but shall remain in the Natural Area Preservation Fund.

1989, c. 553; 2005, c. 94.

§ 10.1-216. Natural area registry.

A. The Department shall maintain a state registry of voluntarily protected natural areas to be called the Virginia Registry of Natural Areas. Registration of natural areas shall be accomplished through voluntary agreement between the owner of the natural area and the Director. State-owned lands may be registered by agreement with the agency to which the land is allocated. Registry agreements may be terminated by either party at any time, and upon such termination the area shall be removed from the registry.

B. A natural area shall be registered when an agreement to protect and manage the natural area for its specified natural heritage resource has been signed by the owner and the Director. The owner of a registered natural area shall be given a certificate signifying the inclusion of the area in the registry.

1989, c. 553.

§ 10.1-217. Gifts, devises and bequests.

Gifts, devises or bequests, whether personal or real property, and the income derived therefrom, accepted by the Director, shall be deemed as gifts to the Commonwealth, which shall be exempt from all state and local taxes, and shall be regarded as the property of the Commonwealth for the purposes of all tax laws.

1989, c. 553.

Article 4 - CHIPPOKES PLANTATION FARM FOUNDATION

§§ 10.1-217.1 through 10.1-217.6. Repealed.

Repealed by Acts 2012, cc. 803 and 835, cl. 91.

Chapter 2.1 - VIRGINIA STATE PARKS FOUNDATION [Repealed]

§§ 10.1-218 through 10.1-225. Repealed.

Repealed by Acts 2003, cc. 79 and 89.

Chapter 3 - STATE PARK DEVELOPMENT REVENUE BOND ACT

§ 10.1-300. Definitions.

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

"Camping and recreational facilities" means camp sites, cabins, lodges, halls, tent camps, trailer camps, public and park lands, as well as equipment, structures and roads which are appurtenant to and useful in connection with state parks including, but not limited to sanitary and utility services, restaurants, cafeterias, stables, horses and riding equipment, bathing beaches, boathouses, boats, conference facilities, sightseeing facilities, sports facilities, bridges, access highways, and all incidental rights, easements, equipment and structures now under the control of the Department or acquired, constructed, enlarged or improved under the provisions of this chapter.

"Cost of camping and recreational facilities" means the purchase price, the cost of construction, the cost of all lands, properties, rights, easements and franchises acquired for construction, enlargements or improvements, reserve funds for the payment of principal or interest on the bonds, interest during construction of the enlargements or improvements, engineering and legal expenses, cost of plans, specifications, surveys, estimates of cost and of revenues, expenses for determining the feasibility or practicability of the enterprise, administrative expense, and other expenses necessary or incident to the financing and operation of any authorized project.

Code 1950, § 10-100; 1966, c. 41; 1970, c. 651; 1984, c. 750; 1986, c. 498; 1988, c. 891.

§ 10.1-301. General powers of Director.

In addition to other powers conferred by law, the Director may, subject to the provisions of this chapter:

1. Acquire, construct, enlarge, improve, operate and maintain camping and recreational facilities in any of the state parks under the control of the Department;

2. Issue revenue bonds of the Commonwealth to pay the cost of camping and recreational facilities and to pledge to the payment of the principal of and the interest on such revenue bonds all or any portion of the revenues to be derived from camping and recreational facilities to be acquired or constructed from the proceeds of such revenue bonds, after obtaining the consent of the Governor;

3. Establish and collect fees and charges for the use of camping and recreational facilities;

4. Receive and accept from any agency or instrumentality of the United States or other public or private body, contributions of either money or property or other things of value, to be held, used and applied for the purposes of this chapter;

5. Make and enter into all contracts or agreements necessary or incidental to the execution of his powers under this chapter;

6. Enter into or obtain contracts or policies of insurance, letters of credit or other agreements to secure payment of the bonds authorized to be issued pursuant to this chapter.

Code 1950, § 10-101; 1966, c. 41; 1984, c. 750; 1986, c. 498; 1988, c. 891.

§ 10.1-302. Payment of cost of camping and recreational facilities.

The cost of camping and recreational facilities financed under this chapter shall be paid solely from the proceeds of revenue bonds issued under the provisions of this chapter, or from proceeds from any grant or contribution which may be made pursuant to the provisions of this chapter.

Code 1950, § 10-102; 1988, c. 891.

§ 10.1-303. Revenue bonds; form and requirements.

A. The Director is authorized to provide for the issuance of revenue bonds of the Commonwealth for the purpose of paying all or any part of the cost of camping and recreational facilities. The principal and interest of the bonds shall be payable solely from the special fund provided in this chapter for such payment. All bonds shall be issued and sold through the Treasury Board whose approval of each of the determinations and designations specified in subsection B of this section shall be required.

B. The revenue bonds shall be dated, shall bear interest rates and be payable at times determined by the Director. The bonds shall mature no longer than thirty years from their date and may be made redeemable before maturity, at a price and under terms and conditions established by the Director prior to the issuance of the bonds. The principal and interest of bonds may be made payable in any lawful medium.

C. The Director shall determine the form of the bonds, including any attached interest coupons, 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. The bonds shall be signed by the Director and the State Treasurer and shall bear the lesser seal of the Commonwealth or a facsimile thereof, and any attached coupons shall bear the facsimile signature of the Director. The bonds may be executed with the facsimile signature of the Director and the State Treasurer, in which case the bonds shall be authenticated by a corporate trustee or other authenticating agent approved by the Director. If any officer whose signature appears on the bonds or coupons ceases to be such officer before delivery of the bonds, the signature shall nevertheless be valid and sufficient for all purposes.

D. All revenue bonds issued under the provisions of this chapter shall have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the Commonwealth. Such bonds and the income therefrom shall be exempt from all taxation within the Commonwealth.

E. The bonds may be issued in coupon or in registered form, or both, as the Director may determine, and provision may be made for the registration of any coupon bond as to both principal and interest, and for the reconversion of any bonds registered as to both principal and interest into coupon bonds.

Code 1950, § 10-103; 1958, c. 484; 1986, c. 498; 1988, c. 891.

§ 10.1-304. Sale and proceeds of revenue bonds; additional or temporary bonds.

A. The Treasury Board as agent for the Director may sell revenue bonds at private or public sale for such price and in the manner it determines to be in the best interests of the Commonwealth.

B. The proceeds of the bonds shall be used solely for the payment of the cost of camping and recreational facilities for which they are issued, and shall be disbursed by the Director.

C. If the proceeds of the bonds of any issue are less than the cost of the camping and recreational facilities for which the bonds were issued, additional bonds may be issued to provide the amount of the deficit. Unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture described in this chapter, the additional bonds shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the facilities.

D. If the proceeds of any bonds issued to pay the cost of camping and recreational facilities exceed the facilities cost, the surplus shall be paid into the fund provided for the payment of principal and interest of the bonds.

E. Prior to the preparation of definitive bonds, temporary bonds may be issued, under similar restrictions, with or without coupons, exchangeable for subsequently issued definitive bonds.

F. The Director may replace any bond which is mutilated, destroyed or lost.

G. The revenue bonds may be issued in accordance with the specific proceedings and conditions required by this chapter.

Code 1950, § 10-103; 1958, c. 484; 1986, c. 498; 1988, c. 891.

§ 10.1-305. Bonds not to constitute debt of Commonwealth.

Revenue bonds issued under the provisions of this chapter shall not constitute a debt of the Commonwealth or a pledge of the faith and credit of the Commonwealth, but such bonds shall be payable solely from the funds provided from fees and charges. The bonds shall state on their face that the Commonwealth is not obligated to pay the bonds or the interest on them except from the special fund provided from fees and charges under this chapter, and that the faith and credit of the Commonwealth are not pledged to the payment of the principal or interest of the bonds. The issuance of revenue bonds under the provisions of this chapter shall not obligate the Commonwealth to levy or to pledge any form of taxation for the bonds or to make any appropriation for their payment, other than to appropriate available funds derived as revenue from fees and charges collected under this chapter.

Code 1950, § 10-104; 1988, c. 891.

§ 10.1-306. Trust indenture; provisions applicable to bond resolution.

Any issue of revenue bonds may be secured by a trust indenture by and between the Director, in the name of the Commonwealth, and a corporate trustee, which may be any trust company or bank having the powers of a trust company. The trust indenture may pledge fees and charges to be received from the use of and for the services rendered by any camp and recreational facilities to be acquired or

constructed from the proceeds of such revenue bonds, but no trust indenture shall convey or mortgage any camping or recreational facilities or any part thereof.

Either the resolution providing for the issuance of revenue bonds or the trust indenture may 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 Director in relation to the acquisition, construction, improvement, maintenance, operation, repair and insurance of such facilities, and the custody, safeguarding and application of all moneys. The trust indenture may also provide that camping and recreational facilities shall be acquired, constructed, enlarged or improved, and paid for under the supervision and approval of consulting engineers employed or designated by the Director, in the name of the Commonwealth, and satisfactory to the original purchasers of the bonds issued. The trust indenture may further require that the security given by contractors and by any depository of the proceeds of the bonds or revenues of the camping and recreational facilities or other moneys pertaining to the facilities be satisfactory to the purchasers. It shall be lawful for any bank or trust company incorporated under the laws of this Commonwealth to act as depository and to furnish indemnifying bonds or to pledge securities required by the Director. Such indenture may set forth the rights and remedies of the bondholders and of the trustee, and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations.

In addition, the indenture may contain other provisions that the Director deems reasonable and proper for the security of the bondholders.

Code 1950, § 10-105; 1986, c. 498; 1988, c. 891.

§ 10.1-307. Fees and charges.

The Director shall establish and collect fees and charges for the use of camping and recreational facilities. These revenues shall be pledged to pay the principal of and the interest on revenue bonds issued under the provisions of this chapter. The fees and charges shall be established and adjusted in respect of the aggregate fees and charges for the camping and recreational facilities the revenues of which shall have been pledged to provide a fund sufficient to pay (i) the cost of maintaining, repairing and operating the facilities unless such cost is otherwise provided for, (ii) the bonds and the interest thereon as the bonds become due and (iii) reasonable reserves for such purposes. Such fees and charges shall not be subject to supervision or regulation by any other state commission, board, bureau or agency.

Code 1950, § 10-106; 1966, c. 41; 1986, c. 498; 1988, c. 891.

§ 10.1-308. Sinking fund.

The fees, charges and revenues derived from any camping and recreational facilities subject to revenue bonds issued under the provisions of this chapter, except charges required to pay the cost of maintaining, repairing and operating such facilities and to provide fund reserves, shall be set aside in a sinking fund. The sinking fund is pledged to and charged with the payment of (i) the interest upon

the bonds as it becomes due, (ii) the principal of the bonds as it becomes due, (iii) the necessary charges of paying agents for paying the interest and principal, and (iv) any premium upon bonds retired by call or purchase as provided in this chapter. The use and disposition of the sinking fund shall be subject to regulations provided in the resolution or the trust indenture. Unless otherwise provided in the resolution or trust indenture, the sinking fund shall be a fund for all such bonds without distinction or priority of one bond over another. Any moneys in the sinking fund in excess of an amount equal to one year's interest on all bonds then outstanding may be applied to the purchase or redemption of bonds.

Code 1950, § 10-107; 1966, c. 41; 1988, c. 891.

§ 10.1-309. Remedies of bondholders and trustee.

Any holder of revenue bonds or attached coupons issued under the provisions of this chapter and any trustee under the trust indenture may protect and enforce all rights granted under the laws of the Commonwealth or under the resolution or trust indenture, and may enforce all duties required by this chapter, or by the resolution or trust indenture, to be performed by the Director, including the establishing, charging and collecting of fees and charges for the use of camping and recreational facilities.

Code 1950, § 10-108; 1986, c. 498; 1988, c. 891.

§ 10.1-310. All moneys received to be trust funds; disbursements.

All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as tolls and revenues, shall be held and applied solely as provided in this chapter. The Director shall, in the resolution or the trust indenture, provide for the payment of the proceeds of the sale of the bonds and the tolls and revenues to be received into the state treasury and carried on the books of the Comptroller in a special account. The Director may provide for the turning over, transfer or paying over of such funds from the state treasury to any officer, agency, bank or trust company, who shall act as trustee of the funds, and hold and apply the fees for the purposes of this chapter subject to such regulation as this chapter and the resolution or trust indenture may provide.

All moneys paid into the state treasury pursuant to the provisions of this chapter are hereby appropriated to the Department for the purpose of carrying out the provisions of this chapter. Disbursements and payments of moneys so paid into the state treasury shall be made by the State Treasurer upon warrants of the State Comptroller which he shall issue upon vouchers signed by the Director or his designee.

Code 1950, § 10-109; 1986, c. 498; 1988, c. 891.

§ 10.1-311. Revenue refunding bonds.

The Director is authorized to provide for the issuance of revenue refunding bonds of the Commonwealth, subject to the applicable provisions of this chapter, for the purpose of refunding any revenue bonds issued under the provisions of this chapter and then outstanding, including the redemption premium on the bonds after first obtaining the consent of the Governor.

Code 1950, § 10-110; 1986, c. 498; 1988, c. 891.

§ 10.1-312. Bonds declared legal and authorized investments.

The bonds issued pursuant to this chapter shall be legal and authorized investments for banks, savings institutions, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians and for all public funds of the Commonwealth or other political subdivisions of the Commonwealth. Such bonds shall be eligible to secure the deposit of public funds of the Commonwealth and public funds of counties, cities, towns, school districts or other political subdivisions of the Commonwealth. In addition, the bonds shall be lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

1986, c. 498, § 10-112.1; 1988, c. 891; 1996, c. 77.

Chapter 4 - SCENIC RIVERS ACT

§ 10.1-400. Definitions.

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

"Board" means the Board of Conservation and Recreation.

"Department" means the Department of Conservation and Recreation.

"Director" means the Director of the Department of Conservation and Recreation.

"River" means a flowing body of water, or a section or portion thereof.

"Scenic river" means a river or section or portion of a river that has been designated a "scenic river" by an act of the General Assembly and that possesses superior natural and scenic beauty, fish and wildlife, and historic, recreational, geologic, cultural, and other assets.

"Virginia Scenic Rivers System" means those rivers or sections of rivers designated as a scenic river by an act of the General Assembly.

1970, c. 468, § 10-168; 1984, c. 739; 1985, c. 346; 1988, c. 891; 1989, c. 656; 2003, c. 240; 2012, cc. 803, 835.

§ 10.1-401. Powers and duties of Director; acquisition of property.

A. The Director shall have the duty to:

1. Identify rivers or sections of rivers, including their shores and natural environs, which should be considered for designation because of their scenic, recreational and historic attributes and natural beauty.

2. Conduct studies of rivers or sections of rivers to be considered for designation as wild, scenic or recreational rivers in cooperation with appropriate agencies of the Commonwealth and the United States.

3. Recommend to the Governor and to the General Assembly rivers or sections thereof to be considered for designation as scenic rivers.

4. Appoint Scenic River Advisory Committees or other local or regional committees of not less than three members to consider and manage scenic river interests and issues. The committees shall assist and advise the Director and the local governing body with the protection or management of the scenic river segment in their jurisdiction. The committees may consider and comment to the Director on any federal, state, or local governmental plans to approve, license, fund, or construct facilities that would alter any of the assets that qualified the river for scenic designation.

B. The Director is authorized to acquire in the name of the Commonwealth, either by gift or purchase, any real property or interest therein which the Director considers necessary or desirable for the protection of any scenic river, and may retain title to or transfer the property to other state agencies. The Director may not exercise the right of eminent domain in acquiring any such property or interest.

1970, c. 468, §§ 10-167, 10-169, 10-170, 10-175; 1984, c. 739; 1985, c. 346; 1988, c. 891; 2003, c. 240.

§ 10.1-402. Development of water and related resources and evaluation as scenic resource.

The Department may review and make recommendations regarding all planning for the use and development of water and related land resources including the construction of impoundments, diversions, roadways, crossings, channels, locks, canals, or other uses that change the character of a stream or waterway or destroy its scenic assets, so that full consideration and evaluation of the river as a scenic resource will be given before alternative plans for use and development are approved. To effectuate the purposes of this section, all state and local agencies shall consider the recommendations of the Department.

1970, c. 468, § 10-167; 1988, c. 891; 2003, c. 240.

§ 10.1-403. Hearing.

Prior to submitting recommendations to the Governor and the General Assembly, the Director shall upon request of any interested state agency or political subdivision, or upon his own motion, hold a public hearing on a proposal to designate a scenic river.

1970, c. 468, § 10-172; 1984, c. 739; 1985, c. 346; 1988, c. 891.

§ 10.1-404. Recommendation that a river be designated a scenic river.

A recommendation to the Governor and General Assembly that a river or section thereof be designated a scenic river shall be submitted with:

1. The views and recommendations of the State Water Control Board and other affected agencies; and

2. A report showing the proposed area and classification, the characteristics which qualify the river or section of river for designation, the general ownership and land use in the area, and the estimated costs of acquisition and administration in the Scenic Rivers System.

1970, c. 468, § 10-171; 1984, cc. 739, 750; 1988, c. 891.

§ 10.1-405. Duties and powers of the Department; eminent domain prohibited.

A. The Department shall:

1. Administer the Virginia Scenic Rivers System to preserve and protect its natural beauty and to assure its use and enjoyment for its scenic, recreational, geologic, fish and wildlife, historic, cultural or other assets and to encourage the continuance of existing agricultural, horticultural, forestry and open space land and water uses.

2. Periodically survey each scenic river and its immediate environs and monitor all existing and proposed uses of each scenic river and its related land resources.

3. Assist local governments in solving problems associated with the Virginia Scenic Rivers System, in consultation with the Director, the Board, and the advisory committees.

B. The Department shall not exercise the right of eminent domain to acquire any real property or interest therein for the purpose of providing additional access to any scenic river. Nothing in this subsection shall limit or modify any powers granted otherwise to any locality.

C. The Department may seek assistance and advice related to the scenic river program from the Department of Wildlife Resources, the Department of Forestry, the Department of Historic Resources, the Virginia Marine Resources Commission, the United States Forest Service, other state and federal agencies and instrumentalities, and affected local governing bodies.

D. The Department shall have the following powers, which may be delegated by the Director:

1. To make and enter into all contracts and agreements necessary or incidental to the performance of its scenic river duties and the execution of its scenic river powers, including but not limited to contracts with private nonprofit organizations, the United States, other state agencies and political subdivisions of the Commonwealth;

2. To accept bequests and gifts of real and personal property as well as endowments, funds, and grants from the United States government, its agencies and instrumentalities, and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable; and

3. To conduct fund-raising activities as deemed appropriate related to scenic river issues.

1970, c. 468, §§ 10-167, 10-173; 1988, c. 891; 2003, c. 240; 2020, c. 958.

§ 10.1-406. Repealed.

Repealed by Acts 2012, cc. 803 and 835, cl. 94.

§ 10.1-406.1. Powers of local governments.

In consultation with the Director, local governments shall have the authority, where a committee has not been established pursuant to subdivision A 4 of § 10.1-401, to appoint a local scenic river advisory committee to advise the local government and the Director in administering that section of designated scenic river within the local government's jurisdiction. The committees shall assist and advise the Director and the local governing body on the protection or management of the scenic river segment in

their jurisdiction. The committees may consider and comment to the Director on any federal, state or local governmental plans to approve, license, fund or construct facilities that would alter any of the assets that qualified the river for scenic designation.

2003, c. 240.

§ 10.1-407. Act of General Assembly required to construct, etc., dam or other structure.

A. As used in this chapter, "dam or other structure" means any structure extending from bank to bank of a river that will interfere with the normal movement of waterborne traffic, interfere with the normal movement of fish or wildlife, raise the water level on the upstream side of the structure, or lower the water level on the downstream side of the structure.

B. After designation of any river or section of river as a scenic river by the General Assembly, no dam or other structure impeding the natural flow thereof shall be constructed, operated, or maintained in such river or section of river unless specifically authorized by an act of the General Assembly.

C. No new dam or other structure or enlargement of an existing dam or other structure that impedes the natural flow of Goose Creek shall be constructed, operated, or maintained within the section of Goose Creek designated as a scenic river by § 10.1-411 unless specifically authorized by an act of the General Assembly.

1970, c. 468, § 10-174; 1988, c. 891; 2018, c. 273.

§ 10.1-408. Uses not affected by scenic river designation.

A. Except as provided in § 10.1-407, all riparian land and water uses along or in the designated section of a river that are permitted by law shall not be restricted by this chapter.

B. Designation as a scenic river shall not be used:

1. To designate the lands along the river and its tributaries as unsuitable for mining pursuant to § 45.1-252 or regulations promulgated with respect to such section, or as unsuitable for use as a location for a surface mineral mine as defined in § 45.1-161.292:2; however, the Department shall still be permitted to exercise the powers granted under § 10.1-402; or

2. To be a criterion for purposes of imposing water quality standards under the federal Clean Water Act.

C. Nothing in this chapter shall preclude the federal government, the Commonwealth, or a locality or local governing body from using, constructing, reconstructing, replacing, repairing, operating, or performing necessary maintenance on any road or bridge.

D. Nothing in § 10.1-414 or 10.1-418.6 shall preclude the Commonwealth or a local governing body or authority from constructing, reconstructing, operating, or performing necessary maintenance on any transportation or public water supply project.

E. Nothing in this chapter shall preclude the continued:

1. Use, operation, and maintenance of the existing Loudoun County Sanitation Authority water impoundment or the installation of new water intake facilities in the existing reservoir located within the section of Goose Creek designated by § 10.1-411;

2. Operation and maintenance of existing dams in the section of the Rappahannock River designated by § 10.1-415;

3. Operation, maintenance, alteration, expansion, or destruction of the Embrey Dam or its appurtenances by the City of Fredericksburg, including the old VEPCO canal and the existing City Reservoir behind the Embrey Dam, or any other part of the City's waterworks; or

4. Operation and maintenance of existing dams in the section of the Clinch River designated by § 10.1-410.2.

F. The City of Richmond shall be allowed to reconstruct, operate, and maintain existing facilities at the Byrd Park and Hollywood Hydroelectric Power Stations at current capacity. Nothing in this chapter shall be construed to prevent the Commonwealth, the City of Richmond, or any common carrier railroad from constructing or reconstructing floodwalls or public common carrier facilities that may traverse the section of the James River designated by § 10.1-412, such as road or railroad bridges, raw water intake structures, or water or sewer lines that would be constructed below water level.

G. The owner of the Harvell Dam in the City of Petersburg may construct, reconstruct, operate, and maintain the Harvell Dam subject to other law and regulation.

H. Nothing in this chapter shall preclude the Commonwealth, the City of Fredericksburg, or the County of Stafford, Spotsylvania, or Culpeper from constructing any new raw water intake structures or devices, including pipes and reservoirs but not dams, or laying water or sewer lines below water level.

I. Nothing in this chapter shall:

1. Preclude the construction, operation, repair, maintenance, or replacement of (i) a natural gas pipeline for which the State Corporation Commission has issued a certificate of public convenience and necessity or any connections with such pipeline owned by the Richmond Gas Utility and connected to such pipeline or (ii) the natural gas pipeline, case number PUE 860065, for which the State Corporation Commission has issued a certificate of public convenience and necessity; or

2. Be construed to prevent the construction, use, operation, and maintenance of a natural gas pipeline (i) traversing the portion of the river designated by § 10.1-411.1 at, or at any point north of, the existing power line that is located approximately 200 feet north of the northern entrance to the Swede Tunnel or (ii) on or beneath the two existing railroad trestles, one located just south of the Swede Tunnel and the other located just north of the confluence of the Guest River with the Clinch River, or to prevent the use, operation, and maintenance of such railroad trestles in furtherance of the construction, operation, use, and maintenance of such pipeline.

1988, c. 891; 2014, c. 823; 2018, c. 273; 2020, cc. 306, 629.

§ 10.1-409. Appomattox State Scenic River.

The Appomattox River, 100 feet from the base of the Brasfield Dam, excluding the Port Walthall Channel of the River, to the confluence with the James River, a distance of approximately 19.2 miles, is hereby designated as the Appomattox State Scenic River, a component of the Virginia Scenic Rivers System.

1984, c. 739, § 10-173.4; 1985, cc. 346, 448; 1988, c. 891; 1998, cc. 82, 167; 2003, c. 240; 2011, c. 276; 2018, c. 273.

§ 10.1-410. Catoctin Creek State Scenic River.

The Catoctin Creek from bank to bank in Loudoun County from Waterford to its junction with the Potomac River, a distance of approximately 16 river miles, is hereby designated as the Catoctin Creek State Scenic River, a component of the Virginia Scenic Rivers System.

1984, c. 739, § 10-173.3; 1985, cc. 346, 448; 1988, c. 891; 2003, c. 240; 2018, c. 273.

§ 10.1-410.1. Chickahominy State Scenic River.

The main channel of the Chickahominy River from the Mechanicsville Turnpike (Route 360) eastward until the terminus of the Henrico County/Hanover County border, is hereby designated as the Chickahominy State Scenic River, a component of the Virginia Scenic Rivers System.

1990, c. 173; 2003, c. 240; 2018, c. 273.

§ 10.1-410.2. Clinch State Scenic River.

The Clinch River in Tazewell and Russell Counties from its confluence with Indian Creek in Cedar Bluff to the Russell-Scott county line, a distance of approximately 66.8 miles and including its tributary, Big Cedar Creek from river mile 5.8 near Lebanon to the confluence, is hereby designated as the Clinch State Scenic River, a component of the Virginia Scenic Rivers System.

1992, c. 308; 1994, c. 329; 2003, c. 240; 2014, c. 823; 2018, c. 273; 2020, cc. 306, 629.

§ 10.1-411. Goose Creek State Scenic River.

Goose Creek, from bank to bank in Fauquier and Loudoun Counties from the confluence of the North and South Prongs of Goose Creek approximately 0.22 mile downstream of the crossing of the Appalachian Trail in Fauquier County to its junction with the Potomac River in Loudoun County, a distance of approximately 48 river miles, is hereby designated as the Goose Creek State Scenic River, a component of the Virginia Scenic Rivers System.

1984, c. 739, § 10-173.2; 1985, cc. 346, 448; 1988, c. 891; 2003, c. 240; 2007, c. 650; 2018, c. 273.

§ 10.1-411.1. Clinch-Guest State Scenic River.

The Clinch River from the Route 58 bridge in St. Paul to the junction with the Guest River, a distance of approximately 9.2 miles, and a segment of the Guest River in Wise County, from a point 100 feet downstream from the Route 72 bridge to its confluence with the Clinch River, a distance of approximately 6.5 miles, are hereby designated as the Clinch-Guest State Scenic River, a component of the Virginia Scenic Rivers System.

1990, c. 397; 1991, c. 487; 2002, c. 251; 2003, c. 240; 2018, c. 273.

§ 10.1-411.2. Russell Fork State Scenic River.

The Russell Fork River from the Splashdam railroad crossing to the Kentucky state line, a distance of nine miles in Dickenson County, is hereby designated as the Russell Fork State Scenic River, a component of the Virginia Scenic Rivers System.

2010, c. 290; 2014, c. 823; 2018, c. 273.

§ 10.1-411.3. Banister State Scenic River.

The Banister River from the Route 29 bridge in Pittsylvania County to the confluence with the Dan River in Halifax County, a distance of approximately 63.3 miles, is hereby designated as the Banister State Scenic River, a component of the Virginia Scenic Rivers System.

2013, c. 352; 2014, c. 149; 2018, c. 273.

§ 10.1-411.4. Cranesnest State Scenic River.

The Cranesnest River from Route 637 to the Flanagan Reservoir Cranesnest Launch Ramp in Dickenson County, a distance of approximately 10.7 miles, is hereby designated as the Cranesnest State Scenic River, a component of the Virginia Scenic Rivers System.

2014, c. 823; 2018, c. 273.

§ 10.1-411.5. Pound State Scenic River.

The Pound River in Wise and Dickenson Counties, from the northern boundary of the Town of Pound near Old Mill Village Road northeastward to the Pound River Campground at Little Laurel Branch in Dickenson County, a distance of approximately 17 miles, is hereby designated as the Pound State Scenic River, a component of the Virginia Scenic Rivers System.

2020, cc. 316.

§ 10.1-411.6. Grays Creek State Scenic River.

Grays Creek in Surry County from Southwark Road (Route 618) to its confluence with the James River, a distance of approximately six miles, is hereby designated as the Grays Creek State Scenic River, a component of the Virginia Scenic Rivers System.

2020, cc. 322, 457, § 10.1-411.5.

§ 10.1-412. Historic Falls of the James State Scenic River.

The Historic Falls of the James from Orleans Street extended in the City of Richmond westward to the 1970 corporate limits of the city is hereby designated as the Historic Falls of the James State Scenic River, a component of the Virginia Scenic Rivers System.

1972, c. 404, § 10-176; 1984, cc. 176, 739; 1985, c. 346; 1988, c. 891; 2003, c. 240; 2018, c. 273.

§ 10.1-413. James State Scenic River.

The James River in Botetourt and Rockbridge Counties, including the Towns of Buchanan and Glasgow, from its origination at the confluence of the Jackson and Cowpasture Rivers running approximately 59 miles southeastward to the Rockbridge-Amherst-Bedford County line and the James River

in Albemarle, Buckingham, and Fluvanna Counties from one mile upstream of Warren boat ramp running approximately 20 miles to New Canton are hereby designated as the James State Scenic River, components of the Virginia Scenic Rivers System.

1985, c. 501, § 10-173.9; 1988, c. 891; 2003, c. 240; 2017, cc. 149, 549; 2018, c. 273; 2020, c. 319.

§ 10.1-413.1. Moormans State Scenic River.

The Moormans River in Albemarle County, from the Charlottesville Reservoir to its junction with the Mechums River, is hereby designated as the Moormans State Scenic River, a component of the Virginia Scenic Rivers System.

1988, cc. 21, 300, 891; 2003, c. 240; 2018, c. 273.

§ 10.1-413.2. North Landing and Tributaries State Scenic River.

The North Landing from the North Carolina line to the bridge at Route 165, the Pocaty River from its junction with the North Landing River to the Blackwater Road bridge, West Neck Creek from the junction with the North Landing River to Indian River Road bridge, and Blackwater Creek from the junction with the North Landing River to the confluence, approximately 4.2 miles, of an unnamed tributary approximately 1.75 miles, more or less, west of Blackwater Road, are hereby designated as the North Landing and Tributaries State Scenic River, components of the Virginia Scenic Rivers System.

1988, cc. 490, 891; 1989, c. 656; 2003, c. 240; 2018, c. 273.

§ 10.1-413.3. Dan State Scenic River.

The Dan River from Berry Hill Road at Route 880 in Pittsylvania County to the downstream property boundary of Abreu/Grogan Park in Danville, a distance of approximately 15 miles, and the Dan River from the North Carolina-Virginia state line in Halifax County to the confluence with Aaron's Creek in Halifax County, a distance of approximately 38.6 miles, are hereby designated as the Dan State Scenic River, components of the Virginia Scenic Rivers System.

2013, c. 705; 2015, c. 46; 2018, c. 273.

§ 10.1-414. Nottoway State Scenic River.

The Nottoway River in Sussex County and Southampton County, from the Route 40 bridge at Stony Creek to the North Carolina line, a distance of approximately 72.5 miles, is hereby designated as the Nottoway State Scenic River, a component of the Virginia Scenic Rivers System.

1984, c. 739, § 10-173.6; 1985, cc. 346, 448; 1988, c. 891; 1992, c. 183; 2003, c. 240; 2011, cc. 96, 136; 2018, c. 273.

§ 10.1-415. Rappahannock State Scenic River.

The mainstem of the Rappahannock River in Rappahannock, Culpeper, Fauquier, Stafford, and Spotsylvania Counties and the City of Fredericksburg from its headwaters near Chester Gap to the Ferry Farm-Mayfield Bridge, a distance of approximately 86 river miles, is hereby designated as the Rappahannock State Scenic River, a component of the Virginia Scenic Rivers System.

1985, c. 124, § 10-173.8; 1988, c. 891; 1990, c. 225; 2003, c. 240; 2018, c. 273.

§ 10.1-415.1. Rockfish State Scenic River.

The Rockfish River in Albemarle and Nelson Counties from the Route 693 bridge in Schuyler to its confluence with the James River, a distance of approximately 9.75 miles, is hereby designated as the Rockfish State Scenic River, a component of the Virginia Scenic Rivers System.

1990, cc. 381, 422; 2003, c. 240; 2018, c. 273.

§ 10.1-416. Rivanna State Scenic River.

The river, stream, or waterway known as the Rivanna from the base of the South Fork Rivanna River reservoir to the junction of the Rivanna with the James River, a distance of approximately 46 miles, is hereby designated as the Rivanna State Scenic River, a component of the Virginia Scenic Rivers System.

1984, c. 739, § 10-173.1; 1988, cc. 20, 299, 891; 2003, c. 240; 2009, c. 541; 2018, c. 273.

§ 10.1-417. Shenandoah State Scenic River.

The Shenandoah River in Clarke County from the Warren-Clarke County line to the Virginia line, a distance of approximately 21.6 miles, is hereby designated as the Shenandoah State Scenic River, a component of the Virginia Scenic Rivers System.

1984, c. 739, § 10-173.7; 1985, cc. 346, 448; 1988, c. 891; 1992, c. 341; 2003, c. 240; 2018, c. 273.

§ 10.1-418. Staunton State Scenic River.

The river, stream, or waterway known as the Staunton or the Roanoke, from State Route 761 at the Long Island Bridge to the Staunton River State Park boat landing, a distance of approximately 62.8 river miles, is hereby designated as the Staunton State Scenic River, a component of the Virginia Scenic Rivers System.

1984, c. 739, § 10-173.5; 1988, c. 891; 2001, c. 58; 2003, cc. 240, 687; 2018, c. 273; 2020, c. 320.

§ 10.1-418.1. North Meherrin State Scenic River.

The North Meherrin River in Lunenburg County from the Route 712 Bridge to the junction with the South Meherrin River, a distance of approximately 7.5 miles, is hereby designated as the North Meherrin State Scenic River, a component of the Virginia Scenic Rivers System.

1997, cc. 45, 505; 2003, c. 240; 2018, c. 273.

§ 10.1-418.2. St. Mary's State Scenic River.

A. Because the authority of the federal government over the St. Mary's River prevents the Commonwealth from legally including the river as a component of the Virginia Scenic Rivers System, the segment of the St. Mary's River from its headwaters to the border of the George Washington National Forest, all on national forest property, is hereby recognized as one of Virginia's Scenic River resources and is worthy of designation as such.

B. The Department shall consult with the Augusta County Board of Supervisors and the Supervisor of the George Washington National Forest on matters related to this scenic river.

2003, c. 240; 2018, c. 273.

§ 10.1-418.3. Meherrin State Scenic River.

The Meherrin River within Mecklenburg, Lunenburg, and Brunswick Counties from the confluence with the North Meherrin River, a designated scenic river, to the Brunswick/Greensville County line, a distance of approximately 54.8 miles, is hereby designated as the Meherrin State Scenic River, a component of the Virginia Scenic Rivers System.

2006, cc. 4, 44; 2013, c. 341; 2018, c. 273.

§ 10.1-418.4. North Mayo State Scenic River.

The North Mayo River in Henry County from the Route 695 crossing to the North Carolina line, a distance of approximately 7.1 miles, is hereby designated as the North Mayo State Scenic River, a component of the Virginia Scenic Rivers System.

2008, cc. 14, 336; 2018, c. 273.

§ 10.1-418.5. South Mayo State Scenic River.

The South Mayo River in Henry County from the Patrick County line to the North Carolina line, a distance of approximately 6.9 miles, is hereby designated as the South Mayo State Scenic River, a component of the Virginia Scenic Rivers System.

2008, cc. 14, 336; 2018, c. 273.

§ 10.1-418.6. Blackwater State Scenic River.

The Blackwater River in Isle of Wight and Southampton Counties and the Cities of Franklin and Suffolk, from Proctor's Bridge at Route 621 to its confluence with the Nottoway River at the North Carolina line, a distance of approximately 56 miles, is hereby designated as the Blackwater State Scenic River, a component of the Virginia Scenic Rivers System.

2010, cc. 139, 308; 2018, c. 273.

§ 10.1-418.7. Jordan State Scenic River.

The Jordan River in Rappahannock County, from the Route 522 bridge at Flint Hill to its confluence with the Rappahannock River, a distance of approximately seven miles, is hereby designated as the Jordan State Scenic River, a component of the Virginia Scenic Rivers System.

2010, c. 231; 2018, c. 273.

§ 10.1-418.8. Hughes State Scenic River.

The Hughes River in Culpeper, Madison, and Rappahannock Counties from the Shenandoah National Park line in Madison County to its confluence with the Hazel River, a distance of approximately 10 miles, is hereby designated as the Hughes State Scenic River, a component of the Virginia Scenic Rivers System.

2010, c. 232; 2018, c. 273.

§ 10.1-418.9. Tye State Scenic River.

The Tye River in Nelson County from Route 738 (Tye Depot Road) to its confluence with the James River, a distance of approximately 12.7 miles, is hereby designated as the Tye State Scenic River, a component of the Virginia Scenic Rivers System.

2014, c. 107; 2018, c. 273.

§ 10.1-418.10. Maury State Scenic River.

The Maury River in Rockbridge County from its origination at the confluence of the Calfpasture and Little Calfpasture Rivers to Furrs Mill Road bridge in Beans Bottom on Route 631, a distance of approximately 19.25 miles, is hereby designated as the Maury State Scenic River, a component of the Virginia Scenic Rivers System.

2020, cc. 403, 404.

Chapter 4.1 - HISTORIC LOWER JAMES RIVER

§ 10.1-419. Declared a state historic river; planning for use and development.

A. In keeping with the public policy of the Commonwealth of Virginia to conserve the portions of certain rivers possessing superior natural beauty, thereby assuring their use and enjoyment for their historic, scenic, recreational, geologic, fish and wildlife, cultural and other values, that portion of the Lower James River in Charles City, James City and Surry Counties, from an unnamed tributary to the James River approximately 1.2 miles east of Trees Point in Charles City County (northside) and Upper Chippokes Creek (southside) to Grices Run (northside) and Lawnes Creek (southside), is hereby declared to be an historic river with noteworthy scenic and ecological qualities.

B. In all planning for the use and development of water and related land resources which changes the character of a stream or waterway or destroys its historic, scenic or ecological values, full consideration and evaluation of the river as an historic, scenic and ecological resource should be given before such work is undertaken. Alternative solutions should also be considered before such work is undertaken.

C. The General Assembly hereby designates the Department of Conservation and Recreation as the agency of the Commonwealth responsible for assuring that the purposes of this chapter are achieved. Nothing in this designation shall impair the powers and duties of the local jurisdictions listed above or the Virginia Department of Transportation.

1988, cc. 721, 891; 1989, c. 656; 2011, cc. 594, 681.

Chapter 5 - SOIL AND WATER CONSERVATION

Article 1 - GENERAL PROVISIONS

§ 10.1-500. Definitions.

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

"Board" means the Virginia Soil and Water Conservation Board.

"County" includes towns.

"City" includes all cities chartered under the Commonwealth.

"District" or "soil and water conservation district" means a political subdivision of this Commonwealth organized in accordance with the provisions of this chapter.

"District director" means a member of the governing body of a district authorized to serve as a director.

"Due notice" means notice published at least twice, with an interval of at least seven days between the two publication dates, in a newspaper or other publication of general circulation within the appropriate area, or if no such publication of general circulation is available, by posting at a reasonable number of conspicuous places within the appropriate area. Such posting shall include, where possible, posting at public places where it is customary to post notices concerning county or municipal affairs. Hearings held pursuant to such notice, at the time and place designated in the notice, may be adjourned from time to time without renewing the notice for the adjourned dates.

"Governing body of a city or county" means the entire governing body regardless of whether all or part of that city or county is included or to be included within a district.

"Government" or "governmental" includes the government of this Commonwealth, the government of the United States, and any of their subdivisions, agencies or instrumentalities.

"Land occupier" or "occupier of land" includes any person, firm or corporation who holds title to, or is in possession of, any lands lying within a district organized, or proposed to be organized, under the provisions of this chapter, in the capacity of owner, lessee, renter, tenant, or cropper. The terms "land occupier" and "occupier of land" shall not include an ordinary employee or hired hand who is furnished a dwelling, garden, utilities, supplies, or the like, as part payment, or payment in full, for his labor.

"Locality" means a county, city or town.

Code 1950, § 21-3; 1950, p. 76; 1954, c. 670; 1964, c. 512; 1970, c. 480; 1985, c. 448; 1988, c. 891.

§ 10.1-500.1. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this chapter the Board or the Director 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 Board or the Director may be sent by regular mail.

2011, c. 566.

§ 10.1-501. Duty of the Attorney General.

The Attorney General shall represent and provide consultation and legal advice in suits or actions under this chapter upon request of the district directors or districts.

Code 1950, § 21-89; 1964, c. 512; 1970, c. 480; 1988, c. 891; 2005, c. 236; 2008, c. 577.

§ 10.1-501.1. Defense of claims.

The Attorney General shall provide the legal defense 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 soil and water conservation 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.

1988, cc. 763, 780, 891.

Article 2 - VIRGINIA SOIL AND WATER CONSERVATION BOARD

§ 10.1-502. Soil and Water Conservation Board; composition.

The Virginia Soil and Water Conservation Board is continued and shall perform the functions conferred upon it in this chapter. The Board shall consist of nine voting members. The Director of the Department of Conservation and Recreation, or his designee, shall be a nonvoting ex officio member of the Board. Three at-large members of the Board shall be appointed by the Governor. After the initial staggering of terms, nonlegislative citizen members shall be appointed for a term of four years. At least two members shall be appointed by the Governor as at-large members and shall have a demonstrated interest in natural resource conservation with a background or knowledge in dam safety, soil conservation, or water quality protection. Additionally, four members shall be farmers at the time of their appointment and two members shall be farmers or district directors, appointed by the Governor from a list of two qualified nominees for each vacancy jointly submitted by the Board of Directors of the Virginia Association of Soil and Water Conservation Districts, in consultation with the Virginia Farm Bureau Federation and the Virginia Agribusiness Council, and the Virginia Soil and Water Conservation Board, each for a term of four years. All appointed members shall not serve more than two consecutive full terms. Appointments to fill vacancies shall be made in the same manner as the original appointments, except that such appointments shall be for the unexpired terms only. The Board may invite the Virginia State Conservationist, Natural Resources Conservation Service, to serve as an advisory nonvoting member. The Board shall keep a record of its official actions, shall adopt a seal and may perform acts, hold public hearings, and promulgate regulations necessary for the execution of its functions under this chapter.

Code 1950, § 21-6; 1950, p. 77; 1954, c. 670; 1956, c. 654; 1960, c. 208; 1964, c. 512; 1968, c. 149; 1970, c. 480; 1984, c. 750; 1985, c. 448; 1988, c. 891; 1989, c. 656; 1991, c. 188; 1992, c. 121; 2003, c. 128; 2005, c. 102; 2011, cc. 213, 228; 2013, cc. 756, 793.

§ 10.1-503. Administrative officer and other employees; executive committee.

The Director shall provide technical experts and other agents and employees, permanent and temporary, necessary for the execution of the functions of the Board. The Board may create an executive committee and delegate to the chairman of the Board, or to the committee or to the Director, such powers and duties as it deems proper. Upon request of the Board, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall,

insofar as possible under available appropriations, and having due regard for the needs of the agency to which the request is directed, assign or detail to the Board, members of the staff or personnel of the agency or institution, and make special reports, surveys, or studies requested by the Board.

Code 1950, § 21-7; 1964, c. 512; 1984, cc. 444, 750; 1988, c. 891; 2003, c. 128.

§ 10.1-504. Chairman; quorum.

The Board shall designate its chairman and may, from time to time, change such designation. Five members of the Board shall constitute a quorum, and the concurrence of a majority of those present and voting shall be required for all determinations.

Code 1950, § 21-8; 1964, c. 512; 1988, c. 891; 2013, cc. 756, 793.

§ 10.1-505. Duties of Board.

In addition to other duties and powers conferred upon the Board, it shall have the following duties and powers:

1. To give or loan appropriate financial and other assistance to district directors in carrying out any of their powers and programs.

2. To keep district directors informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between the districts.

3. To oversee the programs of the districts.

4. To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of the Commonwealth, in the work of the districts.

5. To disseminate information throughout the Commonwealth concerning the activities and programs of the districts, and to encourage the formation of such districts in areas where their organization is desirable.

6. To assist persons, associations, and corporations engaged in furthering the programs of the districts; to encourage and assist in the establishment and operation of such associations and corporations, and to authorize financial assistance to the officers and members of such associations and corporations in the discharge of their duties.

7. To receive, review, approve or disapprove applications for assistance in planning and carrying out works of improvement under the Watershed Protection and Flood Prevention Act (Public Law 566 -- 83rd Congress, as amended), and to receive, review and approve or disapprove applications for any other similar soil and water conservation programs provided in federal laws which by their terms or by related executive orders require such action by a state agency.

8. To advise and recommend to the Governor approval or disapproval of all work plans developed under Public Law 83-566 and Public Law 78-535 and to advise and recommend to the Governor approval or disapproval of other similar soil and water conservation programs provided in federal laws which by their terms or by related executive orders require approval or comment by the Governor.

9. To provide for the conservation of soil and water resources, control and prevention of soil erosion, flood water and sediment damages thereby preserving the natural resources of the Commonwealth.

10. To adopt regulations (i) for the operation of the voluntary nutrient management training and certification program as required by § 10.1-104.1 and (ii) that amend the application rates in the Virginia Nutrient Management Standards and Criteria as required by § 10.1-104.2:1.

11. To provide, from such funds appropriated for districts, financial assistance for the administrative, operational and technical support of districts.

Code 1950, § 21-10; 1956, c. 654; 1958, c. 410; 1962, c. 213; 1964, c. 512; 1970, c. 480; 1972, c. 557; 1988, c. 891; 2013, cc. 593, 658.

Article 3 - SOIL AND WATER CONSERVATION DISTRICTS

§ 10.1-506. Power to create new districts and to relocate or define district boundaries; composition of districts.

A. The Board shall have the power to (i) create a new district from territory not previously within an existing district, (ii) merge or divide existing districts, (iii) transfer territory from an existing district to another district, (iv) modify or create a district by a combination of the above and (v) relocate or define the boundaries of soil and water conservation districts in the manner hereinafter prescribed.

B. An incorporated town within any county having a soil and water conservation district shall be a part of that district. If a town lies within the boundaries of more than one county, it shall be considered to be wholly within the county in which the larger portion of the town lies.

Code 1950, § 21-2; 1956, c. 654; 1970, c. 480, § 21-12.1; 1988, c. 891.

§ 10.1-507. Petitions filed with the Board.

Petitions to modify or create districts, or relocate or define boundaries of existing districts, shall be initiated and filed with the Board for its approval or disapproval by any of the following methods:

1. By petition of a majority of the directors of any or each district or by petition from a majority of the governing body of any or each county or city.

2. By petition of a majority of the governing body of a county or city not within an existing district, requesting to be included in an existing district and concurred in by the district directors.

3. By petition of a majority of the governing body of a county or city or parts thereof not included within an existing district, requesting that a new district be created.

4. By petition, signed by a number of registered voters equal to twenty-five percent of the vote cast in the last general election, who are residents of a county or city not included within an existing district, requesting that a new district be created, or requesting to be included within an existing district. If the petition bears the signatures of the requisite number of registered voters of a county or city, or two or more cities, then the petition shall be deemed to be the joint petition of the particular combination of political subdivisions named in the petition. If the petition deals in whole or in part with a portion or

portions of a political subdivision or subdivisions, then the number of signatures necessary for each portion of a political subdivision shall be the same as if the whole political subdivision were involved in the petition, and may come from the political subdivision at large.

1970, c. 480, § 21-12.2; 1988, c. 891.

§ 10.1-508. Contents and form of petition.

The petition shall set forth:

1. The proposed name of the district;

2. That there is need, in the interest of the public health, safety, and welfare, for the proposed district to function in the territory described in the petition, and a brief statement of the grounds upon which this conclusion is based;

3. A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivision, but shall be deemed sufficient if generally accurate;

4. A request that the Board define the boundaries for such district; that a hearing be held within the territory so defined on the question of the creation of a district in such territory; and that the Board determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the Board may consolidate the petitions.

The Board shall prescribe the petition form.

Code 1950, § 21-13; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-509. Disapproval of petition.

If the Board disapproves the petition, its determination shall be recorded, and if the petitioners are the governing body of a district, county or city or a part of a county or city, the governing body shall be notified in writing. If the petitioners are the requisite number of registered voters prescribed by subdivision 4 of § 10.1-507, notification shall be by a notice printed once in a newspaper of general circulation within the area designated in the petition.

1970, c. 480, § 21-13.1; 1988, c. 891.

§ 10.1-510. Petition approved; Board to give notice of hearing.

If the Board approves the petition, within sixty days after such determination, the Board shall provide due notice of the approval in a newspaper of general circulation in each county or city involved. The notice shall include notice of a hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the action proposed by the petition upon (i) the question of the appropriate boundaries to be assigned to such district, (ii) the propriety of the petition and other proceedings taken under this chapter, and (iii) all questions relevant to such inquiries.

Code 1950, § 21-14; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-511. Adjournment of hearing when additional territory appears desirable.

If it appears upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of a further hearing shall be given throughout the entire area considered for inclusion in the district.

Code 1950, § 21-16; 1988, c. 891.

§ 10.1-512. Determination of need for district.

After a public hearing, if the Board determines that there is need, in the interest of the public health, safety, and welfare, for the proposed district to function in the territory considered at the hearing, it shall record its determination, and shall define, by metes and bounds or by legal subdivisions the boundaries of the district. In so doing, the Board shall consider (i) the topography of the area considered and of the Commonwealth, (ii) the composition of soils in the area, (iii) the distribution of erosion, (iv) the prevailing land-use practices, (v) the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits the lands may receive from being included within such boundaries, (vi) the relation of the proposed area to existing watersheds and to other soil and water conservation districts already organized or proposed for organization, (vii) the existing political subdivisions, and (viii) other relevant physical, geographical, economic, and funding factors. The territory to be included within such boundaries need not be contiguous.

Code 1950, § 21-17; 1964, c. 512; 1970, c. 480; 1988, c. 891; 2002, c. 192.

§ 10.1-513. Determination that district not needed.

If the Board determines after the hearing, and after due consideration of the relevant facts, that there is no need for a soil and water conservation district to function in the territory considered at the hearing, it shall record its determination and deny the petition.

Code 1950, § 21-18; 1964, c. 512; 1988, c. 891.

§ 10.1-514. Determination of feasibility of operation.

After the Board has made and recorded a determination that there is need for the organization of the proposed district in a particular territory, and has defined the boundaries, it shall consider whether the operation of a district within such boundaries is administratively practicable and feasible. In making its determination, the Board shall consider the attitudes of the occupiers of lands lying within the defined boundaries, the probable expense of the operation of such district, the effect upon the programs of any existing districts, and other relevant economic and social factors. If the Board determines that the operation of a district is administratively practicable and feasible, it shall record its determination and proceed with the organization of the district. If the Board determines that the operation of a district is not administratively practicable and feasible, it shall record its determination and deny the petition. If the petition is denied, the Board shall notify the petitioner in the manner provided in this chapter.

Code 1950, § 21-20; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-515. Composition of governing body.

If the Board determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, and the proposed district is created, then its governing body shall be a board of district directors appointed or elected in the number and manner specified as follows:

1. If the district embraces one county or city, or less than one county or city, the board of district directors shall consist of five members, three to be elected by the registered voters of the district and two appointed by the Board.

2. If the district embraces more than one county or city, or parts thereof, the board of district directors shall consist of two members elected by the registered voters from each county or city, or parts thereof embraced by the district. Two members-at-large shall be appointed by the Board.

Code 1950, § 21-27; 1964, c. 512; 1970, c. 480; 1978, c. 763; 1988, c. 891; 2002, cc. 143, 236.

§ 10.1-516. Status of district directors in event of transfer, merger, or division of districts.
In the event of the transfer, merger, or division of districts, the status of the district directors involved shall be affected as follows:

1. The composition of an existing district board of a district to which territory is transferred shall remain in effect until the terms of office of the present elected members expire. Upon the transfer of a county or city, or parts thereof, from one district to another district, (i) elected district directors residing within the territory transferred shall be appointed as directors of the district to which the territory is transferred for a term of office to coincide with that of the elected directors of the district to which the territory is transferred; and (ii) appointed district directors residing within the territory transferred shall be appointed as directors of the district to which the territory is transferred for a term of office to coincide with that of the appointed directors, either as an extension agent appointee or an at-large appointee of the district to which the territory is transferred. At the option of the petitioners, a petition may request that a proposed transfer be treated as a merger or division for the purpose of this section, and the Board at its discretion may grant or refuse such request.

2. Upon the merger of existing districts, or upon the separation from two or more existing districts of a county or city, or parts thereof, which merge to create a new district, all district directors residing within the territory merged shall be appointed as directors of the new district. Following the merger, (i) elected district directors residing within the territory of the new district shall be appointed as directors of the new district for a term of office to coincide with that of elected directors as provided in § 10.1-529; and (ii) appointed district directors residing within the new district shall be appointed as directors of the new district for a term of office to coincide with that of the appointed directors, either as an extension agent appointee or an at-large appointee of the district as provided in § 10.1-529.

3. Upon the division of an existing district, to create a new district, all elected or appointed district directors residing within the territory to be divided from the existing district shall be appointed as directors of the new district. Following the division, (i) elected district directors residing within the territory of the new district shall be appointed as directors of the new district for a term of office to coincide with that of

elected directors as provided in § 10.1-529; and (ii) appointed district directors residing within the territory of the new district shall be appointed as directors of the new district for a term of office to coincide with that of the appointed directors, either as an extension agent appointee or an at-large appointee of the district as provided in § 10.1-529.

This section shall not be construed as broadening or limiting the size of a governing body of a district as prescribed by § 10.1-515. If the operation of this section results in a governing body larger or smaller than the appropriate size permitted by § 10.1-515, then such a variation, if not otherwise corrected by operation of this section, shall be cured by appropriate appointments by the Board and with the next general election after the transfer, merger, or division in which all those elected directors prescribed by § 10.1-515 may be elected.

1970, c. 480, § 21-27.2; 1988, c. 891; 2002, cc. 143, 236.

§ 10.1-517. Application and statement to the Secretary of the Commonwealth.

Upon the creation of a district by any means authorized by this chapter, two district directors appointed by the Board and authorized by the Board to do so, shall present to the Secretary of the Commonwealth an application signed by them, which shall set forth: (i) that a petition for the creation of the district was filed with the Board pursuant to the provisions of this chapter, and that the proceedings specified in this chapter were conducted; (ii) that the application is being filed in order to complete the organization of the district as a political subdivision under this chapter; (iii) that the Board has appointed them as district directors; (iv) the name and official residence of each of the district directors together with a certified copy of the appointments evidencing their right to office; (v) the term of office of each of the district directors; (vi) the proposed name of the district; and (vii) the location of the principal office of the district directors. The application shall be subscribed and sworn to by the two district directors authorized by the Board to make such application before an officer authorized by the laws of the Commonwealth to take and certify oaths. The application shall be accompanied by a certified statement by the Board that the district was created as required by law. The statement shall set forth the boundaries of the district as they have been defined by the Board.

If the creation of a district necessitates the dissolution of an existing district, an application shall be submitted to the Secretary of the Commonwealth, with the application for the district to be created, by the directors of the district to be dissolved, for the discontinuance of such district, contingent upon the creation of the new district. The application for discontinuance, duly verified, shall simply state that the lands encompassed in the district to be dissolved shall be included within the territory of the district created. The application for discontinuance of such district shall be accompanied by a certified statement by the Board that the discontinued district was dissolved as required by law and the new district was created as required by law. The statement shall contain a description of the boundaries of each district dissolved and shall set forth the boundaries of the district created as defined by the Board. The Secretary of the Commonwealth shall issue to the directors of each district a certificate of dissolution and shall record the certificate in an appropriate book of record in his office.

When the boundaries of districts are changed pursuant to the provisions of this chapter, the various affected district boards shall each present to the Secretary of the Commonwealth an application, signed by them, for a new certificate of organization evidencing the change of boundaries. The application shall be filed with the Secretary of the Commonwealth accompanied by a certified statement by the Board that the boundaries have been changed in accordance with the provisions of this chapter. The statement by the Board shall define the new boundary line in a manner adequate to describe the boundary changes of districts. When the application and statement have been filed with the Secretary of the Commonwealth, the change of boundary shall become effective and the Secretary of the Commonwealth shall issue to the directors of each of the districts a certificate of organization evidencing the change of boundaries.

Code 1950, § 21-28; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-518. Action of Secretary on the application and statement; change of name of district.
The Secretary of the Commonwealth shall examine the application and statement and, if he finds that the name proposed for the district is not identical to that of any other soil and water conservation district shall receive and file them and shall record the application in an appropriate book of record in his office. If the Secretary of the Commonwealth finds that the name proposed for the district is identical to that of any other soil and water conservation district, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the Board, which shall submit to the Secretary of the Commonwealth a new name for the district. Upon receipt of the new name, the Secretary of the Commonwealth shall record the application, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed and recorded, as herein provided, the district shall constitute a political subdivision of the Commonwealth. The Secretary of the Commonwealth shall make and issue to the directors a certificate, under the lesser seal of the Commonwealth, of the due organization of the district and shall record the certificate with the application and statement. The boundaries of the district shall include the territory as determined by the Board, but shall not include any area included within the boundaries of another district, except in those cases otherwise provided for in this article. The name of any district may be changed if a petition for such change is subscribed by twenty-five or more landowners from each county or city comprising the district and adopted by resolution of the district directors at any regular meeting. The district directors shall submit a copy of the resolution to the Board and, if the Board concurs, it shall present the resolution, together with a certified statement that it concurs, to the Secretary of the Commonwealth who shall file the resolution and issue a new or amended certificate of organization.

Code 1950, § 21-29; 1954, c. 670; 1958, c. 409; 1960, c. 208; 1962, c. 212; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-518.1. Secretary to send copies of certificates to State Board of Elections.
Whenever the Secretary issues a certificate creating, dissolving, or changing the name or composition of a district, the Secretary shall promptly send a certified copy of such certificate to the State Board of Elections.

2001, c. 53.

§ 10.1-519. Renewal of petition after disapproval or denial.

After six months have expired from the date of the disapproval or denial of any petition for a soil and water conservation district, subsequent petitions covering the same or substantially the same territory may be filed with the Board as provided in this chapter.

Code 1950, § 21-30; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-520. Contracts to remain in force; succession to rights and obligations.

Upon consummation of any transfer, merger, or division, or any combination thereof, using territory within a previously existing district to form a new district or to add to an existing district, all contracts in effect at the time of the consummation, affecting or relating to the territory transferred, merged, or divided, to which the governing body of the district from which such territory was acquired is a party shall remain in force for the period provided in the contracts. Rights and obligations acquired or assumed by the district from which the territory was acquired shall succeed to the district to which the territory is transferred.

1970, c. 480, § 21-31.2; 1988, c. 891.

§ 10.1-521. Determination of status of district boundaries upon annexation or consolidation.

Notwithstanding the provisions of § 10.1-507, the Board may, in its discretion, relocate or redefine district boundaries on its own motion pending or subsequent to any annexation or consolidation.

If the Board determines on its own motion to relocate or redefine district boundaries, the Board shall serve written notice of its determination, containing the full terms of the proposed relocation or redefinition, on the governing body of each district, county, city and town affected by the relocation or redefinition of boundaries. If within forty-five days from the date of service of such notice each governing body affected approves the Board's action by resolution of a majority of the members, the Board may then proceed to act on its motion without a public hearing.

1970, c. 480, § 21-31.3; 1988, c. 891.

§ 10.1-522. Certificate of Secretary of Commonwealth as evidence.

In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established, reorganized, or renamed, in accordance with the provisions of this chapter upon proof of the issuance of the certificate by the Secretary of the Commonwealth. A copy of such certificate shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the issuance and contents thereof.

Code 1950, § 21-32; 1954, c. 670; 1988, c. 891.

§ 10.1-523. Nominating petitions; posting of notice.

A. Beginning 30 days after the date of issuance by the Secretary of the Commonwealth of a certificate of organization of a district, but not later than the filing date specified in § 24.2-507 for the November

2003 general election and each fourth year thereafter, nominating petitions, statements of qualifications, and declarations of candidacy shall be filed with the general registrar of the county or city where the candidate resides, pursuant to §§ 24.2-501, 24.2-503, 24.2-505, 24.2-506, and 24.2-507, to nominate candidates for elected directors of such districts. Nominating petitions, statements of qualifications, and declarations of candidacy for elected directors of existing districts shall be filed with the general registrar of the county or city where the candidate resides, pursuant to §§ 24.2-501, 24.2-503, 24.2-505, 24.2-506, and 24.2-507. Notice of the date for filing such petitions and the time of the election shall be posted in a prominent location accessible to the public at each district office at least 30 days before the filing date. In addition, districts may use newsletters, websites, public service announcements, and other notices to advise the public of elections of district directors.

B. Registered voters may sign more than one nominating petition to nominate more than one candidate for district director.

C. The Virginia Soil and Water Conservation Board shall notify each district of the requirement (i) to post notice of the dates for filing such petitions and the election and (ii) that the posting shall be in a prominent location accessible to the public at each district office at least 30 days before the filing date.

D. Beginning in the year 2003, elections shall be held only at the November general election in 2003 and at the November general election in each fourth year thereafter.

Code 1950, §§ 21-33 to 21-36; 1964, c. 512; 1970, c. 480; 1988, c. 891; 2001, c. 53; 2002, cc. 143, 236; 2009, cc. 370, 629.

§ 10.1-524. Names of nominees furnished electoral board; how ballots printed, etc.

The names of all nominees shall be furnished to the secretary of the electoral board of the respective county or city and shall be printed upon ballots. The ballots shall be printed, voted, counted and canvassed in conformity with the provisions of general law relating to elections, except as herein otherwise provided.

Code 1950, § 21-37; 1960, c. 208; 1970, c. 480; 1988, c. 891.

§ 10.1-525. Canvassing returns.

The result of the election shall be canvassed and certified by the electoral board for the county or city in which the candidate resides pursuant to §§ 24.2-671 through 24.2-678. The State Board of Elections shall, promptly after the meeting required by § 24.2-679, certify to the Director of the Department of Conservation and Recreation a list of the candidates elected and certified as Directors of Soil and Water Conservation Districts, as reported pursuant to § 24.2-675.

Code 1950, § 21-38; 1960, c. 208; 1964, c. 512; 1988, c. 891; 2001, c. 53; 2002, cc. 143, 236.

§ 10.1-526. Persons eligible to vote.

All registered voters residing within each county or city or part thereof shall be eligible to vote in the election for their respective nominees.

Code 1950, § 21-39; 1970, c. 480; 1988, c. 891.

§ 10.1-527. Determination of candidates elected.

If the district embraces one county or city, or less than one county or city, the three candidates who receive the largest number of the votes cast in the election shall be elected directors for the district.

If the district embraces more than one county or city, or parts thereof, the two candidates from each county or city, or part thereof, receiving the largest number of the votes cast in the election shall be the elected directors for the district.

Code 1950, § 21-40; 1970, c. 480; 1988, c. 891.

§ 10.1-528. Expenses and publication of results.

The expenses of such elections shall be paid by the counties or cities concerned. The State Board of Elections shall publish, or have published within the district, the results of the election.

Code 1950, § 21-41; 1960, c. 208; 1964, c. 512; 1988, c. 891; 2002, cc. 143, 236.

§ 10.1-529. District directors constitute governing body; qualifications.

The governing body of the district shall consist of five or more district directors, elected and appointed as provided in this article.

The two district directors appointed by the Board shall be persons who are by training and experience qualified to perform the specialized skilled services which will be required of them in the performance of their duties. One of the appointed district directors shall be the extension agent of the county or city, or one of the counties or cities constituting the district, or a part thereof. Other appointed and elected district directors shall reside within the boundaries of the district.

Code 1950, §§ 21-42, 21-43; 1954, c. 670; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-529.1. Duties of district directors.

In addition to other duties and powers, district directors shall:

1. Identify soil and water issues and opportunities within the district or related to the district and establish priorities for addressing these issues;

2. Seek a comprehensive understanding of the complex issues that impact soil and water, and assist in resolving the identified issues at the watershed, local, regional, state, and national levels;

3. Engage in actions that will improve soil and water stewardship by use of locally led programs;

4. Increase understanding among community leaders, including elected officials and others, of their role in soil and water quality protection and improvement;

5. Foster discussion and advancement within the community of positions and programs by their district;

6. Actively participate in the activities of the district and ensure district resources are used effectively and managed wisely; and

7. Support and promote the advancement of districts and their capabilities.

2005, c. 73.

§ 10.1-530. Designation of chairman; terms of office; filling vacancies.

A. The district directors shall designate a chairman from the elected members, or from the Board-appointed members, of the district board and may change such designation.

B. The term of office of each district director shall be four years. A district director shall hold office until his successor has been elected or appointed and has qualified. The selection of successors to fill a full term shall be made in accordance with the provisions of this article. Beginning in the year 2003, the election of district directors shall be held at the November 2003 general election and each fourth year thereafter. The terms of office of elected district directors shall begin on January 1 following the November general election. The term of office of any district director elected in November 1999 shall be extended to the January 1 following the November 2003 general election. The term of office of any district director elected in November 2000 shall expire on the January 1 following the November 2003 general election. The term of office of any district director elected in November 2001 or 2002 shall be extended to expire on the January 1 following the November general election in 2007. Appointments made by the Board to the at-large position held by an extension agent shall be made to commence January 1, 2005, and each fourth year thereafter. Appointments made by the Board to the other at-large position shall be made to commence January 1, 2007, and each fourth year thereafter. Any appointment made by the Board prior to January 1, 2005, to an at-large position held by an extension agent shall be made to expire January 1, 2005; and any appointment made by the Board prior to January 1, 2007, to the other at-large position shall be made to expire January 1, 2007.

C. A vacancy shall exist in the event of the death, resignation or removal of residence from the district of any director or the elimination or detachment from the district of the territory in which a director resides, or by the removal of a director from office by the Board. Any vacancy in an elected or appointed director's position shall be filled by an appointment made by the Board for the unexpired term. In the event of the creation of a new district, the transfer of territory from an existing district to an existing district, or the addition of territory not previously within an existing district to an existing district, the Board may appoint directors to fill the vacancies of elected directors prescribed by § 10.1-515 in the newly created district or in the territory added to an existing district. Such appointed directors shall serve in office until the elected directors prescribed by § 10.1-515 take office after the next general election at which directors for the entire district are selected.

Code 1950, §§ 21-44, 21-45; 1954, c. 670; 1956, c. 654; 1964, c. 512; 1970, c. 480; 1988, c. 891; 2001, c. 54; 2002, cc. 143, 236.

§ 10.1-531. Quorum and expenses.

A majority of the district directors currently in office shall constitute a quorum and the concurrence of a majority of those present and voting shall be required for all determinations. A district director shall receive no compensation for his services, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

Code 1950, § 21-46; 1970, c. 480; 1988, c. 891; 2003, c. 616.

§ 10.1-532. Employment of officers, agents and employees.

The district directors may employ a secretary-treasurer, whose qualifications shall be approved by the Board, technical experts, and such other officers, agents and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties and compensation.

Code 1950, § 21-47; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-533. Delegation of powers.

The district directors may delegate to their chairman or to one or more district directors, agents or employees such powers and duties as they may deem proper.

Code 1950, § 21-48; 1970, c. 480; 1988, c. 891.

§ 10.1-534. Information furnished Board.

The district directors shall furnish to the Board or Department, upon request, copies of ordinances, rules, regulations, orders, contracts, forms, and other documents that they adopt or employ, and other information concerning their activities as the Board or Department may require in the performance of its duties under this chapter.

Code 1950, § 21-49; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-535. Bonds of officers and employees; records and accounts.

The district directors shall (i) provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; (ii) provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and (iii) provide for an annual audit of the accounts of receipts and disbursements by the Auditor of Public Accounts or a certified public accountant approved by him.

Code 1950, § 21-50; 1970, c. 480; 1988, c. 891.

§ 10.1-536. Removal from office.

Any district director may be removed by the Board for neglect of duty or malfeasance in office, or may be removed in accordance with the provisions of general law. Upon receipt of a sworn complaint against a director filed by a majority of the directors of that same district, the Board shall (i) notify the district director that a complaint has been filed against him and (ii) hold a hearing to determine whether the district director's conduct constitutes neglect of duty or malfeasance in office.

Code 1950, § 21-51; 1964, c. 512; 1970, c. 480; 1988, c. 891; 1996, c. 493.

§ 10.1-537. Representatives of governing bodies to be invited to consult with directors.

The district directors shall invite the legislative body of any locality located near the territory comprised within the district to designate a representative to advise and consult with the directors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such locality.

Code 1950, § 21-52; 1970, c. 480; 1988, c. 891.

§ 10.1-538. District is political subdivision.

A soil and water conservation district organized under the provisions of this article shall constitute a political subdivision of this Commonwealth.

Code 1950, § 21-53; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-539. Surveys and dissemination of information.

Districts are authorized to (i) conduct surveys, investigations, and research relating to soil erosion and floodwater and sediment damages, and to agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water, and the preventive and control measures and works of improvement needed; (ii) publish the results of such surveys, investigations, or research; and (iii) disseminate information concerning preventive and control measures and works of improvement. However, in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of the Commonwealth or the United States.

Code 1950, § 21-54; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-540. Demonstrational projects.

Districts are authorized to conduct demonstrational projects within the district on lands owned or controlled by the Commonwealth or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands. The purpose of such projects is to demonstrate by example the means, methods, and measures by which soil and water resources may be conserved, and soil erosion in the form of soil washing may be prevented and controlled, and works of improvement for flood prevention or agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water may be carried out.

Code 1950, § 21-55; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-541. Preventive and control measures.

Districts are authorized to carry out preventive and control measures and works of improvement for flood prevention or agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation and changes in use of land on lands owned or controlled by the Commonwealth or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands.

Code 1950, § 21-56; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-542. Financial aid to agencies and occupiers.

Districts are authorized to enter into agreements, within the limits of available appropriations, to give, lend or otherwise furnish financial or other aid to any governmental or other agency, or any occupier of lands within the district, to provide erosion-control and prevention operations and works of improvement for flood prevention or agricultural and nonagricultural phases of the conservation, development,

utilization, and disposal of water within the district. Agreements shall be subject to such conditions as the directors may deem necessary to advance the purposes of this chapter.

Code 1950, § 21-57; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-543. Acquisition, improvement and disposition of property.

Districts are authorized to (i) obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; (ii) maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and (iii) sell, lease, or otherwise dispose of any of their property or interests therein in furtherance of the provisions of this chapter.

Code 1950, § 21-58; 1988, c. 891.

§ 10.1-544. Making material and equipment available.

Districts are authorized to make available, on terms they prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings and other material or equipment that will assist land occupiers to conserve soil resources, to prevent and control soil erosion and to prevent floods or to carry out the agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water.

Code 1950, § 21-59; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-545. Construction, improvement, operation and maintenance of structures.

Districts are authorized to construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this chapter.

Code 1950, § 21-60; 1956, c. 654; 1988, c. 891.

§ 10.1-546. Development of programs and plans.

Districts are authorized to develop comprehensive programs and plans for the conservation of soil resources, for the control and prevention of soil erosion, for flood prevention or for agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water within the district. Such programs and plans shall specify the acts, procedures, performances, and avoidances which are necessary or desirable to effect such programs and plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in use of land. After such programs and plans have been approved by the Board, districts are authorized to publish such programs and plans, and information, and bring them to the attention of occupiers of lands within the district.

Code 1950, § 21-61; 1956, c. 654; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-546.1. Delivery of Agricultural Best Management Practices Cost-Share Program.

Districts shall locally deliver the Virginia Agricultural Best Management Practices Cost-Share Program described under § 10.1-2128.1, under the direction of the Board, as a means of promoting

voluntary adoption of conservation management practices by farmers and land managers in support of the Department's nonpoint source pollution management program.

2004, c. 474; 2009, cc. 209, 263; 2013, cc. 593, 658.

§ 10.1-547. Acquisition and administration of projects; acting as agent for United States, etc.; acceptance of gifts.

Districts shall have the following additional authority:

1. To acquire by purchase, lease, or other similar means, and to administer, any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control, or erosion prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies, or by the Commonwealth or any of its agencies;

2. To manage, as agent of the United States or any of its agencies, or of the Commonwealth or any of its agencies, any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control or erosion prevention project, or combinations thereof, within its boundaries;

3. To act as agent for the United States or any of its agencies, or for the Commonwealth or any of its agencies, in connection with the acquisition, construction, maintenance, operation, or administration of any soil conservation, flood prevention, drainage, irrigation, agricultural and nonagricultural water management, erosion control, or erosion prevention project, or combinations thereof, within its boundaries;

4. To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from the Commonwealth or any of its agencies or from any other source, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations.

Code 1950, § 21-62; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-548. Contracts; rules.

Districts are authorized to have a seal; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments necessary or convenient to the exercise of their powers; to make, amend and repeal regulations not inconsistent with this chapter, to effect their purposes and powers.

Code 1950, § 21-63; 1988, c. 891.

§ 10.1-549. Cooperation between districts.

The directors of any two or more districts may cooperate in the exercise of any or all powers conferred in this chapter.

Code 1950, § 21-4; 1970, c. 480; 1988, c. 891.

§ 10.1-549.1. Virginia Envirothon.

Districts in partnership with other districts, agencies, organizations, and associations are authorized to coordinate and implement the Virginia Envirothon Program, administered by the Virginia Association of Soil and Water Conservation Districts, which enables learning experiences for high school students through competitive events focusing on natural resource conservation.

2003, c. 402.

§ 10.1-550. State agencies to cooperate.

Agencies of the Commonwealth which have jurisdiction over or administer any state-owned lands, and agencies of any political subdivision of the Commonwealth which have jurisdiction over or administer any publicly owned lands lying within the boundaries of any district, shall cooperate to the fullest extent with the district directors in the effectuation of programs and operations undertaken pursuant to this chapter. The district directors shall be given free access to enter and perform work upon such public-owned lands.

Code 1950, § 21-5; 1970, c. 480; 1988, c. 891.

§ 10.1-551. Conditions for extension of benefits.

As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by the Commonwealth or any of its agencies, the district directors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands that will tend to prevent or control erosion and prevent floodwaters and sediment damages thereon.

Code 1950, § 21-64; 1956, c. 654; 1970, c. 480; 1988, c. 891.

§ 10.1-552. Renting machinery and equipment.

Districts are authorized to rent the machinery and other equipment made available to them by the Department to governing bodies and, individuals, or groups of individuals to be used by them for the purpose of soil and water conservation upon such terms as the district directors deem proper.

Code 1950, § 21-65; 1954, c. 670; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-553. Petition by landowners.

Any time after two years after the organization of a district, any twenty-five owners of land lying within the boundaries of the district may file a petition with the Board requesting that the operations of the district be terminated and the existence of the district discontinued.

Code 1950, § 21-106; 1964, c. 512; 1988, c. 891.

§ 10.1-554. Hearings.

The Board may conduct public meetings and public hearings upon the termination petition to assist it in the considerations thereof.

Code 1950, § 21-107; 1964, c. 512; 1988, c. 891.

§ 10.1-555. Referendum.

Within sixty days after a termination petition has been received by the Board it shall give due notice of the holding of a referendum and shall supervise the referendum, and issue appropriate regulations governing the conduct thereof. The ballot shall contain the following question: "Shall the existence of the (name of the soil and water conservation district) be terminated?

[] Yes

[] No"

All registered voters residing within the boundaries of the district shall be eligible to vote in the referendum. No informalities in the conduct of the referendum or in any related matters shall invalidate the referendum or the result if proper notice has been given and if the referendum has been fairly conducted.

Code 1950, § 21-108; 1964, c. 512; 1988, c. 891.

§ 10.1-556. Determination of Board.

The Board shall publish the result of the referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the Board determines that the continued operation of the district is administratively practicable and feasible, it shall record the determination and deny the petition. If the Board determines that the continued operation of the district is not administratively practicable and feasible, it shall record its determination and certify the determination to the district directors. In making its determination the Board shall consider the proportion of the votes cast in favor of the discontinuance of the district to the total number of votes cast, the probable expense of carrying on erosion control operations within the district, and other relevant economic and social factors. However, the Board shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum have been cast in favor of the continuance of such district.

Code 1950, § 21-109; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-557. Duty of directors after certification of Board.

Upon receiving from the Board certification that the Board has determined that the continued operation of the district is not administratively practicable and feasible, the district directors shall proceed to determine the affairs of the district. The district directors shall dispose of all property belonging to the district at public auction and shall pay the proceeds of the sale into the state treasury. The district directors shall then file an application, duly verified, with the Secretary of the Commonwealth, for the discontinuance of the district, and shall transmit with the application the certificate of the Board setting forth the determination of the Board that the continued operation of the district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as provided by law, and shall set forth a full accounting of such properties and proceeds of the sale. The Secretary of the Commonwealth shall issue to the district dir-

ectors a certificate of dissolution and shall record the certificate in an appropriate book of record in his office.

Code 1950, § 21-110; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-558. Effect of issuance of certificate of dissolution.

Upon issuance of a certificate of dissolution, all ordinances and regulations previously adopted and in force within such district shall be of no further force. All contracts entered into, to which the district or district directors are parties, shall remain in force for the period provided in the contracts. The Board shall be substituted for the district or district directors as party to the contracts. The Board shall be entitled to all benefits and subject to all liabilities under the contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the district directors would have had.

Code 1950, § 21-111; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-559. Petitions limited to once in five years.

The Board shall not entertain petitions for the discontinuance of any district, conduct elections upon such petitions or make determinations pursuant to such petitions more often than once in five years.

Code 1950, § 21-112; 1964, c. 512; 1988, c. 891.

Article 3.1 - AGRICULTURAL STEWARDSHIP ACT

§§ 10.1-559.1 through 10.1-559.11. Repealed.

Repealed by Acts 2008, c. 860, cl. 9, effective October 1, 2008.

Article 4 - EROSION AND SEDIMENT CONTROL LAW

§§ 10.1-560 through 10.1-571. Repealed.

Repealed by Acts 2013, cc. 756 and 793, cl. 2.

Article 5 - SOIL SURVEY

§§ 10.1-572, 10.1-573. Repealed.

Repealed by Acts 2012, cc. 785 and 819, cl. 2.

Chapter 6 - FLOOD PROTECTION AND DAM SAFETY

Article 1 - FLOOD DAMAGE REDUCTION ACT

§ 10.1-600. Definitions.

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

"Emergency flood insurance program" or "emergency program" means the Emergency Program of the Federal Insurance Administration which provides subsidized flood insurance for potential flood victims, applicable to both new and existing structures, pending completion of applicable actuarial rates which is a prerequisite for eligibility to participate in the regular program.

"Flood hazard area" means those areas susceptible to flooding.

"Flood plain" or "flood-prone areas" means those areas adjoining a river, stream, water course, ocean, bay or lake which are likely to be covered by floodwaters.

"Flood plain management regulations" means zoning ordinances, subdivision regulations, the building code, health regulations, special purpose ordinances such as flood plain ordinances, grading ordinances or erosion control ordinances, and other rules, regulations and ordinances which may affect flood plain uses. The term describes such legally enforceable regulations, in any combination thereof, which provide standards for the control of the use and occupancy of flood-prone areas.

"Hundred year flood" means a flood of that level which on the average will have a one percent chance of being equaled or exceeded in any given year at designated locations.

"Locality" means a county, city, or town.

"National flood insurance program" means the program established by the United States Congress under provisions of the National Flood Insurance Act of 1968, as amended, and as expanded in the Flood Disaster Protection Act of 1973, designed to provide flood insurance at rates made affordable through federal subsidy.

"Nonfederal cost" means the flood protection project costs provided by sources other than the federal government.

"Regular flood insurance program" means a program of insurance under the national flood insurance program, for which the Federal Insurance Administrator has issued a flood insurance rate map and applicable actuarial rates, and under which new construction will not be eligible for flood insurance except at the applicable actuarial rates.

1977, c. 310, § 62.1-44.110; 1987, c. 163; 1988, c. 891; 1989, cc. 468, 497.

§ 10.1-601. Repealed.

Repealed by Acts 1989, cc. 468, 497.

§ 10.1-602. Powers and duties of Department.

The Department shall:

1. Develop a flood protection plan for the Commonwealth. This plan shall include:

a. An inventory of flood-prone areas;

b. An inventory of flood protection studies;

c. A record of flood damages;

d. Strategies to prevent or mitigate flood damage; and

e. The collection and distribution of information relating to flooding and flood plain management.

The flood protection plan shall be reviewed and updated by the Department on a regular basis, but at least once every five years, and for each of the items listed in provisions a through e, the plan shall

state when that provision was last updated and when the next update is planned. The plan shall be maintained in an online format so as to be easily accessed by other government entities and by the public. The online plan shall contain links to the most current information available from other federal, state, and local sources. All agencies of the Commonwealth shall provide assistance to the Department upon request.

2. Serve as the coordinator of all flood protection programs and activities in the Commonwealth, including the coordination of federal flood protection programs administered by the United States Army Corps of Engineers, the United States Department of Agriculture, the Federal Emergency Management Agency, the United States Geological Survey, the Tennessee Valley Authority, other federal agencies and local governments.

3. Make available flood and flood damage reduction data to localities for planning purposes, in order to assure necessary local participation in the planning process and in the selection of desirable alternatives which will fulfill the intent of this article. This shall include the development of a data base to include (i) all flood protection projects implemented by federal agencies and (ii) the estimated value of property damaged by major floods.

4. Assist localities in their management of flood plain activities in cooperation with the Department of Housing and Community Development.

5. Carry out the provisions of this article in a manner which will ensure that the management of flood plains will preserve the capacity of the flood plain to carry and discharge a hundred year flood.

6. Make, in cooperation with localities, periodic inspections to determine the effectiveness of local flood plain management programs, including an evaluation of the enforcement of and compliance with local flood plain management ordinances, rules and regulations.

7. Coordinate with the United States Federal Emergency Management Agency to ensure current knowledge of the identification of flood-prone communities and of the status of applications made by localities to participate in the National Flood Insurance Program.

8. Establish guidelines which will meet minimum requirements of the National Flood Insurance Program in furtherance of the policy of the Commonwealth to assure that all citizens living in flood-prone areas may have the opportunity to indemnify themselves from flood losses through the purchase of flood insurance under the regular flood insurance program of the National Flood Insurance Act of 1968 as amended.

9. Subject to the provisions of the Appropriations Act, provide financial and technical assistance to localities in an amount not to exceed fifty percent of the nonfederal costs of flood protection projects.

1977, c. 310, § 62.1-44.112; 1981, c. 315; 1987, c. 163; 1988, c. 891; 1989, cc. 468, 497; 2015, cc. 172, 251.

§ 10.1-603. State agency compliance.

All agencies and departments of the Commonwealth shall comply with the flood plain regulations established pursuant to this article when planning for facilities in flood plains.

1977, c. 310, § 62.1-44.108; 1988, c. 891; 1989, cc. 468, 497.

Article 1.1 - STORMWATER MANAGEMENT

§§ 10.1-603.1 through 10.1-603.8:1. Repealed.

Repealed by Acts 2013, cc. 756 and 793, cl. 2, effective July 2, 2013.

§ 10.1-603.9. Repealed.

Repealed by Acts 2012, cc. 785 and 819, cl. 2.

§§ 10.1-603.10 through 10.1-603.15. Repealed.

Repealed by Acts 2013, cc. 756 and 793, cl. 2, effective July 2, 2013.

Article 1.1:1 - NUTRIENT TRADING ACT

§§ 10.1-603.15:1 through 10.1-603.15:5. Repealed.

Repealed by Acts 2013, cc. 756 and 793, cl. 2.

Article 1.2 - DAM SAFETY, FLOOD PREVENTION, AND PROTECTION ASSISTANCE FUND

§ 10.1-603.16. Definitions.

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

"Authority" means the Virginia Resources Authority created in Chapter 21 (§ 62.1-197 et seq.) of Title 62.1.

"Board" means the Board of Directors of the Virginia Resources Authority.

"Cost," as applied to any project financed under the provisions of this article, means the total of all costs incurred by the local government or private entity as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications; hydrologic and hydraulic studies and analyses; architectural, engineering, financial, legal or other special services; mapping; the cost of acquisition of flood-prone land and any buildings and improvements thereon, including the discharge of any obligations of the sellers of such land, buildings or improvements; site preparation and development, including demolition or removal of existing structures; construction and reconstruction; labor; materials, machinery and equipment; the reasonable costs of financing incurred by the local government or private entity in the course of the development of the project; carrying charges incurred before placing the project in service; necessary expenses incurred in connection with placing the project in service; the funding of accounts and reserves that the Authority may require; and the cost of other items that the Authority determines to be reasonable and necessary.

"Dam owner" means the owner of the land on which a dam is situated, the holder of an easement permitting the construction of a dam and any person or entity agreeing to maintain a dam.

"Department" means the Department of Conservation and Recreation.

"Director" means the Director of the Department of Conservation and Recreation.

"Flood prevention or protection" means the construction of dams, levees, flood walls, channel improvements or diversions, local flood proofing, evacuation of flood-prone areas or land use controls which reduce or mitigate damage from flooding.

"Flood prevention or protection studies" means hydraulic and hydrologic studies of flood plains with historic and predicted floods, the assessment of flood risk and the development of strategies to prevent or mitigate damage from flooding.

"Fund" or "revolving fund" means the Dam Safety, Flood Prevention and Protection Assistance Fund.

"Local funds" means cash provided for project or study implementation that is not derived from federal or state grants or loans.

"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution or laws of the Commonwealth, or any combination of any two or more of the foregoing.

"Private entities" means dam owners, whether individuals, partnerships, corporations, or other nongovernmental entities.

"Project" means the development and implementation of activities or measures performed to eliminate, prevent, reduce, or mitigate damages caused by flooding or to identify flood hazards; the design, repair, and safety modifications of a dam or impounding structure, as defined in § 10.1-604, and identified in dam safety reports generated pursuant to § 10.1-607 or 10.1-609; or the mapping and digitization of dam break inundation zones. The term includes, without limitation, the construction, modification or repair of dams, levees, flood walls, channel improvements or diversions; evacuation, relocation, and retrofitting of flood-prone structures; flood warning and response systems; redevelopment, acquisition, and open-space use of flood-prone areas; hydrologic and hydraulic studies of floodplains with historic and predicted floods; remapping of regulated flood hazard areas; the assessment of flood risks; the development of flood hazard mitigation strategies and plans, flood prevention and protection studies, and matching funds for federal funds for these activities. The lands involved with such projects shall be located within the Commonwealth.

1989, cc. 462, 498; 1995, c. 510; 2002, c. 320; 2006, cc. 648, 765.

§ 10.1-603.16:1. Certified mail; subsequent mail or notices may be sent by regular mail.
Whenever in this article the Board 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 Board may be sent by regular mail.

2011, c. 566.

§ 10.1-603.17. Dam Safety, Flood Prevention and Protection Assistance Fund established.

The Dam Safety, Flood Prevention and Protection Assistance Fund is hereby established and set apart as a permanent and nonreverting fund. The Fund shall consist of any moneys appropriated by the General Assembly, funds returned by localities or other public or private sources in the form of interest and repayment of loan principal, deposits pursuant to §§ 15.2-2243.1 and 38.2-401.1, all income from the investment of moneys held in the Fund, and any other sums designated for deposit in the Fund from any source public or private, including without limitation any federal grants, and awards or other forms of assistance received by the Commonwealth that are eligible for deposit in the Fund under federal law. Any moneys remaining in the Fund at the end of the biennium including any appropriated funds and all principal interest accrued, interest and payments shall not revert to the general fund.

1989, cc. 462, 498; 2002, c. 320; 2006, cc. 648, 765; 2008, c. 491.

§ 10.1-603.18. Administration of the Fund.

The Authority shall administer and manage the Fund, and establish the interest rates and the repayment terms of such loans as provided in this article, in accordance with a memorandum of agreement with the Director. The Director shall, after consultation with all interested parties, develop a guidance document governing project eligibility and project priority criteria, and the Director, upon approval from the Virginia Soil and Water Conservation Board, shall direct the distribution of loans and grants from the Fund to local governments and private entities. In order to carry out the administration and management of the Fund, the Authority may employ officers, employees, agents, advisers and consultants, including without limitation, attorneys, financial advisors, engineers, and other technical advisors and public accountants, and determine their duties and compensation without the approval of any other agency or instrumentality. The Authority may disburse from the Fund reasonable costs and expenses incurred in the administration and management of the Fund and may establish and collect a reasonable fee for its management services. However, any such fee shall not exceed one-eighth of one percent of any bond par, loan or grant amount.

1989, cc. 462, 498; 1995, c. 510; 2002, c. 320; 2006, cc. 648, 765; 2010, c. 13.

§ 10.1-603.18:1. Deposit of money; expenditures; investments.

All money belonging to the Fund shall be deposited in an account or 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 of the Authority or other officers or employees designated by the Board of Directors of 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. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested

by the Authority in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth.

2006, cc. 648, 765.

§ 10.1-603.18:2. Collection of money due Fund.

The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan to a local government or private entity, including, if appropriate, taking the action required by § 15.2-2659 or 62.1-216.1 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

2006, cc. 648, 765.

§ 10.1-603.19. Purposes for which Fund is to be used; Authority to set terms and conditions of loans.

A. The Director may make grants or loans to any local government for the purpose of assisting the local government in the development and implementation of flood prevention or protection projects, or for flood prevention or protection studies.

B. The Director may expend from the Fund up to $50,000 annually for cost share with federal agencies in flood protection studies of statewide or regional significance.

C. The Director may, in order to protect public safety and welfare, make (i) grants or loans to a local government that owns a dam, to a local government for a dam located within the locality, or to a private entity that owns a dam for the design, repair, and the safety modifications of such a dam if it is identified in a safety report generated pursuant to § 10.1-607 or 10.1-609 and (ii) grants to a local government or private entity for the determination of the hazard classification for impounding structures, dam break analysis, the mapping and digitization of dam break inundation zones, incremental damage analysis, and other engineering requirements such as emergency action plan development.

D. The Director may, in order to reduce dam owner expenses associated with hazard classification, dam break analysis, the mapping and digitization of dam break inundation zones, incremental damage analysis, and other engineering requirements such as emergency action plan development, expend moneys from the Fund to employ staff or to directly contract for these services. The Director may establish a fee to be paid by the dam owner to offset a portion of these services. Such fee shall not exceed 50 percent of the cost incurred by the Department.

E. The Director may, in order to protect people at risk from a dam failure and to assist dam owners, localities, and emergency responders, expend moneys from the Fund to maintain a statewide dam failure early warning system in cooperation with the Department of Emergency Management and the U.S. National Weather Service.

F. The total amount of expenditures for grants in any fiscal year shall not exceed 50 percent of the total noninterest or income deposits made to the Fund during the previous fiscal year, together with the

total amount collected in interest or income from the investment of moneys in the Fund from the previous fiscal year as determined at the beginning of the fiscal year.

G. Any grants made from the Fund shall require a 50 percent project match by the applicant. Any loans made from the Fund shall require a minimum of a 10 percent project match by the applicant.

H. Except as otherwise provided in this article, moneys in the Fund shall be used solely to make loans or grants to local governments or private entities to finance or refinance the cost of a project. The local government or private entity to which loans or grants are made, the purposes of the loan or grant, the required match for the specific loan or grant, and the amount of each loan or grant, shall be designated in writing by the Director to the Authority. No loan or grant from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses. Loans may also be from the Fund, at the Director's discretion, to a local government that has developed a low-interest loan program to provide loans or other incentives to facilitate the correction of dam or impounding structure deficiencies, as required by the Department, provided that the moneys are to be used only for the program and that the dams or impounding structures to be repaired or upgraded are owned by private entities.

I. Except as otherwise provided in this article, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between different loans and between local governments and private entities to finance or refinance the cost of a project. Each loan shall be evidenced by appropriate bonds or notes of the local government or by the appropriate debt instrument for private entities payable to the Fund. Private entities shall duly authorize an appropriate debt instrument and execute same by their authorized legal representatives. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority may require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions, covenants, conditions, and other information as it may deem necessary or convenient to further the purpose of the loan. In addition to any other terms or conditions that the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government or private entity receiving the loan covenant to perform any of the following:

1. Establish and collect rents, rates, fees, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of operation, maintenance, replacement, renewal, and repairs of the project; (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund; and (iii) any amounts necessary to create and maintain any required reserve, including any rate stabilization fund deemed necessary or appropriate by the Authority to offset the need, in whole or part, for future increases in rents, rates, fees, or charges;

2. With respect to local governments, levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government;

3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund and any other amounts becoming due under any agreement entered into in connection with the loan, or for the operation, maintenance, repair, or replacement of the project or any portions thereof or other property of the borrower, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable;

4. Create and maintain other special funds as required by the Authority;

5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund and to provide for the remedies of the Fund in the event of any default by the borrower in payment of the loan, including, without limitation, any of the following:

a. The conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein;

b. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

c. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, facilities, utilities, or systems, for the purpose of operations and financing, and the pledging of the revenues from such combined projects, undertakings, facilities, utilities and systems to secure the loan from the Fund borrower made in connection with such combination or any part or parts thereof;

d. The maintenance, replacement, renewal, and repair of the project; and

e. The procurement of casualty and liability insurance;

6. Obtain a review of the accounting and internal controls from the Auditor of Public Accounts or his legally authorized representatives, as applicable. The Authority may request additional reviews at any time during the term of the loan. In addition, anyone receiving a report in accordance with § 10.1-603.23 may request an additional review as set forth in this section; and

7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to obtain payment of any amounts in default, as applicable.

All local governments or private entities borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings, and make and carry out any contracts that are contemplated by this article. Such contracts need not be identical among all local governments or private entities but may be structured as determined by the Authority according to the needs of the contracting local governments or private entities and the Fund.

Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.

1989, cc. 462, 498; 1995, c. 510; 2002, c. 320; 2005, c. 80; 2006, cc. 648, 765; 2010, c. 13; 2011, c. 637; 2017, c. 245.

§ 10.1-603.19:1. Payments from a developer or subdivider.

A. The Authority shall administer and manage deposits made to the Fund pursuant to § 15.2-2243.1 in accordance with a memorandum of agreement with the Director. From funds deposited pursuant to this section the Authority may charge an administrative fee, which shall be determined in consultation with the Director. The Director is authorized to expend these deposits to allow a dam owner to make the necessary upgrades to an impounding structure made necessary by a proposed development or subdivision in a dam break inundation zone.

B. Fifty percent of any funds held pursuant to subsection A shall be provided to the owner upon receipt of an alteration permit from the Virginia Soil and Water Conservation Board. The remaining funds shall be provided to the owner upon completion of the necessary upgrades and receipt of a regular operation and maintenance certificate from the Board. The owner shall post a bond or other financial guarantee payable to the Fund conditioned on completion of the stages of necessary upgrades prior to any release of payment to the owner. Such bond or other financial guarantee shall be released within 60 days of the receipt of a regular operation and maintenance certificate by the dam owner.

C. Interest generated pursuant to these deposits shall remain in the Fund and may be utilized for the purposes set out in § 10.1-603.19.

2008, c. 491.

§ 10.1-603.20. Condition for making loans or grants.

A. The Director may authorize a loan or grant for flood prevention or protection projects, or for flood prevention or protection studies under the provisions of § 10.1-603.19 only when the following conditions exist:

1. An application for the loan or grant has been submitted by an applicant in the manner and form specified by the Director, setting forth the amount of the loan or grant requested, and the use to which the loan or grant will be applied. The application shall describe in detail (i) the area to be studied or protected, including the population and the value of property to be protected, historic flooding data and hydrologic studies projecting flood frequency; (ii) the estimated cost-benefit ratio of the project; (iii) the ability of the locality to provide its share of the cost; (iv) the administration of local flood plain management regulations; and (v) other necessary information to establish project or study priority.

2. The local government agrees and furnishes assurance, satisfactory to the Director, that it will satisfactorily maintain any structure financed, in whole or in part, through the loans or grants provided under this article.

3. If the requested loan or grant is sought to acquire land, the Director shall require satisfactory evidence prior to acting on the request that the local government will acquire the land if the loan or grant is made.

4. A local government is eligible to receive a grant once every five years, provided that it has a flood mitigation plan approved by the Director and has demonstrated satisfactory evidence of plan implementation. Lacking an approved plan the local government is eligible for a grant once every ten years.

5. [Repealed.]

B. The Director shall develop guidance criteria for making loans and grants for dam safety repair projects. Priority shall be given to making loans for high hazard dams.

1989, cc. 462, 498; 1995, c. 510; 2002, c. 320; 2006, cc. 648, 765.

§§ 10.1-603.21, 10.1-603.22. Repealed.

Repealed by Acts 2006, cc. 648 and 765, cl. 2.

§ 10.1-603.22:1. Pledge of loans to secure bonds of Authority.

The Authority is empowered at any time and from time to time to pledge, assign, or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment, or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned, or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned, or transferred in trust as set forth above and any payments of principal, interest, or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment, or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned, or transferred until no longer required for such purpose by the terms of the pledge, assignment, or transfer.

2006, cc. 648, 765.

§ 10.1-603.22:2. Sale of loans.

The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this article. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the Fund.

2006, cc. 648, 765.

§ 10.1-603.22:3. Powers of the Authority.

The Authority is authorized to do any act necessary or convenient to the exercise of the powers granted in this article or reasonably implied thereby.

2006, cc. 648, 765.

§ 10.1-603.22:4. Liberal construction of article.

The provisions of this article shall be liberally construed to the end that its beneficial purposes may be effectuated. Insofar as the provisions of this article are inconsistent with the provisions of any other law, general, special or local, the provisions of this article shall be controlling.

2006, cc. 648, 765.

§ 10.1-603.23. Record of application for grants or loans and action taken.

A record of each application for a grant or loan and the action taken thereon shall be open to public inspection at the office of the Department. The Authority shall report annually to the General Assembly and the Governor on the Fund and the administration of all grants and loans made from the Fund.

1989, cc. 462, 498; 2006, cc. 648, 765.

Article 1.3 - Virginia Community Flood Preparedness Fund

§ 10.1-603.24. Definitions.

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

"Authority" means the Virginia Resources Authority.

"Cost," as applied to any project financed under the provisions of this article, means the total of all costs incurred by the local government as reasonable and necessary for carrying out all works and undertakings necessary or incident to the accomplishment of any project.

"Department" means the Virginia Department of Conservation and Recreation.

"Flood prevention or protection" means the construction of hazard mitigation projects, acquisition of land, or implementation of land use controls that reduce or mitigate damage from coastal or riverine flooding.

"Flood prevention or protection study" means the conduct of a hydraulic or hydrologic study of a flood plain with historic and predicted floods, the assessment of flood risk, and the development of strategies to prevent or mitigate damage from coastal or riverine flooding.

"Fund" means the Virginia Community Flood Preparedness Fund created pursuant to § 10.1-603.25.

"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision created by the General Assembly or pursuant to the Constitution of Virginia or laws of the Commonwealth.

"Low-income geographic area" means any locality, or community within a locality, that has a median household income that is not greater than 80 percent of the local median household income, or any area in the Commonwealth designated as a qualified opportunity zone by the U.S. Secretary of the Treasury via his delegation of authority to the Internal Revenue Service.

"Nature-based solution" means an approach that reduces the impacts of flood and storm events through the use of environmental processes and natural systems. A nature-based solution may provide additional benefits beyond flood control, including recreational opportunities and improved water quality.

2016, c. 762; 2020, cc. 1199, 1219, 1254, 1280.

§ 10.1-603.25. Virginia Community Flood Preparedness Fund; loan and grant program.

A. The Virginia Shoreline Resiliency Fund is hereby continued as a permanent and perpetual fund to be known as the Virginia Community Flood Preparedness Fund. All sums that are designated for deposit in the Fund from revenue generated by the sale of emissions allowances pursuant to subdivision C 1 of § 10.1-1330, all sums that may be appropriated to the Fund by the General Assembly, all receipts by the Fund from the repayment of loans made by it to local governments, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private, including any federal grants and awards or other forms of assistance received by the Commonwealth that are eligible for deposit in the Fund under federal law, shall be designated for deposit 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 any appropriated funds and all principal, interest accrued, and payments, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. All loans and grants provided under this article shall be deemed to promote the public purposes of enhancing flood prevention or protection and coastal resilience.

B. Moneys in the Fund shall be used solely for the purposes of enhancing flood prevention or protection and coastal resilience as required by this article. The Authority shall manage the Fund and shall establish interest rates and repayment terms of such loans as provided in this article in accordance with a memorandum of agreement with the Department. The Authority may disburse from the Fund its reasonable costs and expenses incurred in the management of the Fund. The Department shall direct distribution of loans and grants from the Fund in accordance with the provisions of subsection D.

C. The Authority is authorized at any time and from time to time to pledge, assign, or transfer from the Fund or any bank or trust company designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of principal of, premium, if any, and interest on any and all bonds, as defined in § 62.1-199, issued to finance any flood prevention or protection project undertaken pursuant to the provisions of this article. In addition, the Authority is authorized at any time and from time to time to sell upon such terms and conditions as the Authority deems appropriate any loan or interest thereon made pursuant to this article. The net proceeds of the sale remaining after payment of costs and expenses shall be designated for deposit to, and become part of, the Fund.

D. The Fund shall be administered by the Department as prescribed in this article. The Department, in consultation with the Secretary of Natural Resources and the Special Assistant to the Governor for Coastal Adaptation and Protection, shall establish guidelines regarding the distribution and

prioritization of loans and grants, including loans and grants that support flood prevention or protection studies of statewide or regional significance.

E. Localities shall use moneys from the Fund primarily for the purpose of implementing flood prevention and protection projects and studies in areas that are subject to recurrent flooding as confirmed by a locality-certified floodplain manager. Moneys in the Fund may be used to mitigate future flood damage and to assist inland and coastal communities across the Commonwealth that are subject to recurrent or repetitive flooding. No less than 25 percent of the moneys disbursed from the Fund each year shall be used for projects in low-income geographic areas. Priority shall be given to projects that implement community-scale hazard mitigation activities that use nature-based solutions to reduce flood risk.

F. Any locality is authorized to secure a loan made pursuant to this section by placing a lien up to the value of the loan against any property that benefits from the loan. Such a lien shall be subordinate to each prior lien on such property, except prior liens for which the prior lienholder executes a written subordination agreement, in a form and substance acceptable to the prior lienholder in its sole and exclusive discretion, that is recorded in the land records where the property is located.

G. Any locality using moneys in the Fund to provide a loan for a project in a low-income geographic area is authorized to forgive the principal of such loan. If a locality forgives the principal of any such loan, any obligation of the locality to repay that principal to the Commonwealth shall not be forgiven and such obligation shall remain in full force and effect. The total amount of loans forgiven by all localities in a fiscal year shall not exceed 30 percent of the amount appropriated in such fiscal year to the Fund by the General Assembly.

2016, c. 762; 2020, cc. 1199, 1219, 1254, 1280.

§ 10.1-603.26. Deposit of moneys; expenditures; investments.

All moneys in the Fund shall be deposited in an account or 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 moneys in these accounts shall be paid by check signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of the Authority. All deposits of moneys 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. Moneys in the Fund shall not be commingled with other moneys of the Authority. Moneys in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth.

2016, c. 762.

§ 10.1-603.27. Annual audit.

The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the accounts of the Authority, and the cost of such audit services as shall be required shall be borne by the Authority. The audit shall be performed at least each fiscal year, in accordance with generally accepted auditing standards and, accordingly, include such tests of the accounting records and such auditing procedures as are considered necessary under the circumstances. The Authority shall furnish copies of such audit to the Governor.

2016, c. 762.

Article 2 - DAM SAFETY ACT

§ 10.1-604. Definitions.

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

"Alteration" means changes to an impounding structure that could alter or affect its structural integrity. Alterations include, but are not limited to, changing the height or otherwise enlarging the dam, increasing normal pool or principal spillway elevation or physical dimensions, changing the elevation or physical dimensions of the emergency spillway, conducting necessary repairs or structural maintenance, or removing the impounding structure.

"Board" means the Soil and Water Conservation Board.

"Construction" means the construction of a new impounding structure.

"Dam break inundation zone" means the area downstream of a dam that would be inundated or otherwise directly affected by the failure of a dam.

"Height" means the structural height of a dam which is defined as the vertical distance from the natural bed of the stream or watercourse measured at the downstream toe of the dam to the top of the dam.

"Impounding structure" means a man-made structure, whether a dam across a watercourse or other structure outside a watercourse, used or to be used to retain or store waters or other materials. The term includes: (i) all dams that are twenty-five feet or greater in height and that create an impoundment capacity of fifteen acre-feet or greater, and (ii) all dams that are six feet or greater in height and that create an impoundment capacity of fifty acre-feet or greater. The term "impounding structure" shall not include: (a) dams licensed by the State Corporation Commission that are subject to a safety inspection program; (b) dams owned or licensed by the United States government; (c) dams operated primarily for agricultural purposes which are less than twenty-five feet in height or which create a maximum impoundment capacity smaller than 100 acre-feet; (d) water or silt retaining dams approved pursuant to § 45.1-222 or § 45.1-225.1; or (e) obstructions in a canal used to raise or lower water.

"Owner" means the owner of the land on which a dam is situated, the holder of an easement permitting the construction of a dam and any person or entity agreeing to maintain a dam.

"Watercourse" means a natural channel having a well-defined bed and banks and in which water normally flows.

1982, c. 583, § 62.1-115.1; 1986, c. 9; 1988, c. 891; 2001, c. 92; 2006, c. 30.

§ 10.1-604.1. Determination of hazard potential classification.

A. The hazard potential classification for an impounding structure shall be determined by one of the following procedures:

1. The owner of an impounding structure that does not currently hold a regular or conditional certificate from the Board, or the owner of an impounding structure that is already under certificate but the owner believes that a condition has changed downstream of the impounding structure that may reduce its hazard potential classification, may request that the Department conduct a simplified dam break inundation zone analysis to determine whether the impounding structure has a low hazard potential classification. The owner shall pay 50 percent of the cost of the analysis. If the Department finds that the impounding structure has a low hazard potential classification, the owner shall be eligible for general permit coverage in accordance with § 10.1-605.3. If the Department finds that the impounding structure appears to be a high or significant hazard potential structure, the owner's engineer shall provide further analysis in accordance with § 10.1-606.2 and the criteria set out in the Impounding Structure Regulations (4VAC50-20). The owner may be eligible for grant assistance in accordance with § 10.1-603.19.

2. The owner may propose a hazard potential classification that shall be subject to approval by the Board. To support the proposed hazard classification, an analysis shall be conducted by the owner's engineer and shall comply with the criteria set out in the Impounding Structure Regulations (4VAC50-20). If the engineer finds that the impounding structure has a low hazard potential classification, the owner shall be eligible for general permit coverage in accordance with § 10.1-605.3.

An impounding structure's hazard potential classification's determination shall include an analysis of those hazards created by flood and nonflood dam failures. In conducting the hazard potential classification, the Department or the owner's engineer may utilize an incremental damage analysis. When considering the failure of the impounding structure under a flood condition, such engineers shall only consider those hazards that exceed those created by the flood event.

B. Any owner aggrieved by a decision of the Department regarding his impounding structure shall have the right to judicial review of the final decision pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Board may adopt regulations in accordance with § 10.1-605 to establish a simplified methodology for dam break inundation zone analysis.

2011, c. 637.

§ 10.1-605. Promulgation of regulations by the Board; guidance document.

A. The Board shall adopt regulations to ensure that impounding structures in the Commonwealth are properly and safely constructed, maintained and operated. Dam safety regulations promulgated by the State Water Control Board shall remain in full force until amended in accordance with applicable procedures.

B. The Board's Impounding Structure Regulations shall not require any impounding structure in existence or under a construction permit prior to July 1, 2010, that is currently classified as high hazard, or is subsequently found to be high hazard through reclassification, to upgrade its spillway to pass a rainfall event greater than the maximum recorded within the Commonwealth, which shall be deemed to be 90 percent of the probable maximum precipitation.

1. Such an impounding structure shall be determined to be in compliance with the spillway requirements of the regulations provided that (i) the impounding structure will pass two-thirds of the reduced probable maximum precipitation requirement described in this subsection and (ii) the dam owner certifies annually and by January 15 that such impounding structure meets each of the following conditions:

a. The owner has a current emergency action plan that is approved by the Board and that is developed and updated in accordance with the regulations;

b. The owner has exercised the emergency action plan in accordance with the regulations and conducts a table-top exercise at least once every two years;

c. The Department has verification that both the local organization for emergency management and the Virginia Department of Emergency Management have on file current emergency action plans and updates for the impounding structure;

d. That conditions at the impounding structure are monitored on a daily basis and as dictated by the emergency action plan;

e. The impounding structure is inspected at least annually by a professional engineer and all observed deficiencies are addressed within 120 days of such inspection;

f. The owner has a dam break inundation zone map developed in accordance with the regulations that is acceptable to the Department;

g. The owner is insured in an amount that will substantially cover the costs of downstream property losses to others that may result from a dam failure; and

h. The owner shall post the dam's emergency action plan on his website, or upon the request of the owner, the Department or another state agency responsible for providing emergency management services to citizens agrees to post the plan on its website. If the Department or another state agency agrees to post the plan on its website, the owner shall provide the plan in a format suitable for posting.

2. A dam owner who meets the conditions of subdivisions 1 a through 1 h, but has not provided record drawings to the Department for his impounding structure, shall submit a complete record report developed in accordance with the construction permit requirements of the Impounding Structure Regulations, excluding the required submittal of the record drawings.

3. A dam owner who fails to submit certifications required by subdivisions 1 a through 1 h in a timely fashion shall not enjoy the presumption that such impounding structure is deemed to be in compliance with the spillway requirements of the Board's Impounding Structure Regulations (4VAC50-20).

4. Any dam owner who has submitted the certifications required by subdivisions 1 a through 1 h shall make (i) such certifications, (ii) the emergency action plan required by subdivision 1 a, and (iii) the certificate of insurance required by subdivision 1 g available, upon request and within five business days, to any person. A dam owner may comply with the requirements of this subdivision by providing the same information on a website and directing the requestor to such website. A dam owner who fails to comply with this subdivision shall be subject to a civil penalty pursuant to § 10.1-613.2.

C. The Board's regulations shall establish an incremental damage analysis procedure that permits the spillway design flood requirement for an impounding structure to be reduced to the level at which dam failure shall not significantly increase downstream hazard to life or property, provided that the spillway design flood requirement shall not be reduced to below the 100-year flood event for high or significant hazard impounding structures, or to below the 50-year flood event for low hazard potential impounding structures.

D. The Board shall consider the impact of limited-use or private roadways with low traffic volume and low public safety risk that are downstream from or across an impounding structure in the determination of the hazard potential classification of an impounding structure.

1982, c. 583, § 62.1-115.2; 1986, c. 9; 1988, c. 891; 2010, cc. 249, 270; 2011, c. 323.

§ 10.1-605.1. Delegation of powers and duties.

The Board may delegate to the Director or his designee any of the powers and duties vested in the Board by this article, except the adoption and promulgation of regulations. Delegation shall not remove from the Board authority to enforce the provisions of this article. At each meeting of the Board, the Director shall identify those impounding structures that are currently classified as high hazard and determined noncompliant with the spillway requirements of the Board's Impounding Structure Regulations (4VAC50-20) or with statutory presumption provided by subsection B of § 10.1-605.

2006, c. 30; 2011, c. 323.

§ 10.1-605.2. Certain regulations affecting impounding structures.

The Virginia Soil and Water Conservation Board shall, in accordance with the Administrative Process Act (§ 2.2-4000 et seq.), adopt regulations that consider the impact of downstream limited-use or private roadways with low traffic volume and low public safety risk on the determination of the hazard potential classification of an impounding structure under the Dam Safety Act (§ 10.1-604 et seq.).

2010, c. 41.

§ 10.1-605.3. General permit for certain impounding structures.

A. The Board shall develop a general permit for the regulation of low hazard potential impounding structures in accordance with § 10.1-605.

B. The regulations shall include the following:

1. A registration statement requiring:

a. The name and address of the owner;

b. The location of the impounding structure;

c. The height of the impounding structure;

d. The volume of water impounded; and

e. A certification from the owner that the impounding structure (i) is classified as low hazard pursuant to a determination by the Department or the owner's professional engineer in accordance with § 10.1-604.1; (ii) is, to the best of his knowledge, properly and safely constructed and currently has no observable deficiencies; and (iii) shall be maintained and operated in accordance with the provisions of the general permit.

2. A spillway design flood requirement of the 100-year flood. When appropriate, the spillway design flood requirement may be reduced to the 50-year flood in accordance with an incremental damage analysis.

3. A simplified emergency preparedness plan that provides:

a. Name and location information for the impounding structure;

b. Name of owner and operator and associated contact information;

c. Contact information for relevant emergency responders;

d. Procedures for notifying downstream property owners or occupants; and

e. Identification of any downstream roadways that would be impacted by a failure.

4. An annual inspection of the impounding structure by the owner. No inspection of the impounding structure by a licensed professional engineer shall be required if the owner certifies at the time of general permit coverage renewal that conditions at the impounding structure and downstream are unchanged.

5. Procedures for seeking and issuing coverage under the general permit.

6. A six-year term of coverage under the general permit after which time the owner shall reapply for coverage by filing a new registration statement. The Board may, by regulation, establish a fee for the processing of registration statements.

C. The owner shall notify the Department immediately of any change in circumstances that would cause the impounding structure to no longer qualify for coverage under the general permit. In the event of a failure or an imminent failure at the impounding structure, the owner shall immediately notify the local emergency services coordinator, the Department of Emergency Management, and the Depart-

ment. The Department shall take actions in accordance with § 10.1-608 or 10.1-609, depending on the degree of hazard and the imminence of failure caused by the unsafe condition.

D. Failure to comply with the provisions of the general permit may result in penalties assessed in accordance with §§ 10.1-613.1 and 10.1-613.2.

E. In order to qualify for the provisions of § 10.1-606.3, a dam owner eligible for a general permit shall file a dam break inundation map with the Department and with the offices with plat and plan approval authority or zoning responsibilities as designated by the locality for each locality in which the dam break inundation zone resides in accordance with § 10.1-606.2.

F. If the failure of a low hazard potential impounding structure is not expected to cause loss of human life or economic damage to any property except property owned by the owner, the owner may follow the special criteria established for certain low hazard impounding structures in the Impounding Structure Regulations (4VAC50-20) in lieu of coverage under the general permit.

2011, c. 637.

§ 10.1-606. Local advisory committee.

When requested by the governing body of any affected county or city, the Board shall provide for the creation of a local advisory committee to advise the Board on impoundments within that locality. The advisory committee shall include, but not be limited to, representation of the owner and each affected county or city. Prior to the issuance of any permits under this article, the Board shall advise any existing local advisory committee of any affected jurisdiction for which a permit is being sought, and request comments from the committee on the permit application. No permit shall be issued until at least sixty days after such a local advisory committee has been so advised.

1982, c. 583, § 62.1-115.3; 1984, c. 240; 1988, c. 891.

§ 10.1-606.1. Repealed.

Repealed by Acts 2008, c. 491, cl. 2.

§ 10.1-606.2. Mapping of dam break inundation zones.

A. An owner of an impounding structure shall prepare a map of the dam break inundation zone for the impounding structure in accordance with criteria set out in the Virginia Impounding Structure Regulations (4VAC50-20). Existing maps prepared by the locality in accordance with these regulations may be used for this purpose.

B. All maps prepared in accordance with subsection A shall be filed with the Department of Conservation and Recreation and with the offices with plat and plan approval authority or zoning responsibilities as designated by the locality for each locality in which the dam break inundation zone resides.

C. Owners of impounding structures may be eligible for matching grants of up to 50 percent from the Dam Safety, Flood Prevention and Protection Assistance Fund and other sources of funding available to the Director to assist in the development of dam break inundation zone maps and for conducting incremental damage assessments in accordance with the Virginia Impounding Structure Regulations.

D. All properties identified within the dam break inundation zone shall be incorporated by the owner into the dam safety emergency action plan of that impounding structure so as to ensure the proper notification of persons downstream and other affected persons or property owners in the event of an emergency condition at the impounding structure.

2008, c. 491.

§ 10.1-606.3. Requirement for development in dam break inundation zones.

A. For any development proposed within the boundaries of a dam break inundation zone that has been mapped in accordance with § 10.1-606.2, the locality shall, as part of a preliminary plan review pursuant to § 15.2-2260, or as part of a plan review pursuant to § 15.2-2259 if no preliminary review has been conducted, (i) review the dam break inundation zone map on file with the locality for the affected impounding structure, (ii) notify the dam owner, and (iii) within 10 days forward a request to the Department of Conservation and Recreation to make a determination of the potential impacts of the proposed development on the spillway design flood standards required of the dam. The Department shall notify the dam owner and the locality of its determination within 45 days of the receipt of the request. Upon receipt of the Department's determination, the locality shall complete the review in accordance with § 15.2-2259 or 15.2-2260. If a locality has not received a determination within 45 days of the Department's receipt of the request, the Department shall be deemed to have no comments, and the locality shall complete its review. Such inaction by the Department shall not affect the Board's authority to regulate the impounding structure in accordance with this article.

If the Department determines that the plan of development would change the spillway design flood standards of the impounding structure, the locality shall not permit development as defined in § 15.2-2201 or redevelopment in the dam break inundation zone unless the developer or subdivider agrees to alter the plan of development so that it does not alter the spillway design flood standard required of the impounding structure or he contributes payment to the necessary upgrades to the affected impounding structure pursuant to § 15.2-2243.1.

The developer or subdivider shall provide the dam owner and all affected localities with information necessary for the dam owner to update the dam break inundation zone map to reflect any new development within the dam break inundation zone following completion of the development.

The requirements of this subsection shall not apply to any development proposed downstream of a dam for which a dam break inundation zone map is not on file with the locality as of the time of the official submission of a development plan to the locality.

B. The locality is authorized to map the dam break inundation zone in accordance with criteria set out in the Virginia Impounding Structure Regulations (4VAC50-20) and recover the costs of such mapping from the owner of an impounding structure for which a dam break inundation zone map is not on file with the locality and a map has not been prepared by the impounding structure owner.

C. This section shall not be construed to supersede or conflict with the authority granted to the Department of Mines, Minerals and Energy for the regulation of mineral extraction activities in the

Commonwealth as set out in Title 45.1. Nothing in this section shall be interpreted to permit the impairment of a vested right in accordance with § 15.2-2307.

2008, c. 491.

§ 10.1-606.4. Notice to the public.

A. When applying to the Department for a permit under the Virginia Impounding Structure Regulations (4VAC50-20) to construct a new high or significant hazard potential impounding structure, the applicant shall provide localities that lie within the inundation zone with copies of the construction permit request and the dam break inundation zone map.

B. When submitting the application to the Department, the permit applicant shall publish a notice in a newspaper of general circulation in the affected localities summarizing the permit request and providing the address of locations where copies of the construction permit request and the dam break inundation zone map may be examined. The applicant shall provide copies of the published notice to the Department and to the local government offices with plat and plan approval authority or zoning responsibilities as designated by the locality.

C. The Department may hold, on behalf of the Virginia Soil and Water Conservation Board, a public hearing on safety issues associated with the construction permit application for the impounding structure.

D. The Department may require a permit applicant to provide other forms of reasonable notice, such as the placement of a sign on the proposed site, to ensure that affected parties have been informed.

E. The permit applicant shall send, by certified mail, to each property owner within the dam break inundation zone, a summary of the permit request and the addresses of locations where the map of the dam break inundation zone may be viewed. In the case of a condominium or cooperative, such information shall be sent to each property owner or the owners' association. The permit applicant may rely upon real estate assessment records to identify property owners. If requested by the Department, the applicant shall provide a list of the persons to whom notice has been sent.

2008, c. 491; 2011, c. 637.

§ 10.1-607. Safety inspections.

No one shall maintain a dam which unreasonably threatens the life or property of another. The Board shall cause safety inspections to be made of impounding structures on such schedule as it deems appropriate. The time of the initial inspection and the frequency of reinspection shall depend on such factors as the condition of the structure and its size, type, location and downstream hazard potential. The owners of dams found to have deficiencies which could threaten life or property if not corrected shall take the corrective actions needed to remove such deficiencies within a reasonable time. All safety inspections shall be conducted by or under the supervision of a licensed professional engineer. Each report shall bear the seal and signature of the licensed professional engineer responsible for the inspection.

The Board shall be responsible for the inspection and reinspection of flood control dams where the maintenance and operation of the dam is the responsibility of a soil and water conservation district and where the permit for operation of the impounding structure is held by such a district.

1982, c. 583, § 62.1-115.4; 1986, c. 209; 1988, c. 891; 2000, c. 14.

§ 10.1-607.1. Criteria for designating a dam as unsafe.

A. Designation of a dam as unsafe shall be based on one or more of the following findings:

1. The dam has serious deficiencies in its design or construction or has a physical condition that if left unaddressed could result in a failure that may result in loss of life or significant damage to downstream property.

2. The design, construction, operation, or maintenance of the dam is such that its expected performance during flooding conditions threatens the structural integrity of the dam.

B. After completion of the safety inspections pursuant to § 10.1-607, or as otherwise informed of an unsafe condition, the Department shall take actions in accordance with § 10.1-608 or 10.1-609 depending on the degree of hazard and imminence of failure caused by the unsafe condition.

2006, c. 30; 2010, c. 270.

§ 10.1-608. Unsafe dams presenting imminent danger.

When the Director finds an unsafe dam constituting an imminent danger to life or property, he shall immediately notify the Department of Emergency Management and confer with the owner. The owner of a dam found to constitute an imminent danger to life or property shall take immediate corrective action. If the owner does not take appropriate and timely action to correct the danger found, the Governor shall have the authority to take immediate appropriate action, without the necessity for a hearing, to remove the imminent danger. The Attorney General may bring an action against the owner of the impounding structure for the Commonwealth's expenses in removing the imminent danger. There shall be a lien upon the owner's real estate for the Commonwealth's expenses in removing the imminent danger. The owner may avoid the Commonwealth's costs, and recover any damages, upon proving that the dam was known to be safe at the time such action was taken, and that the owner had provided or offered to immediately provide such proof to the Director before the action complained of was taken. Nothing herein shall in any way limit any authority existing under the Emergency Services and Disaster Law (§ 44-146.13 et seq.).

1982, c. 583, § 62.1-115.5; 1986, c. 9; 1988, c. 891.

§ 10.1-609. Unsafe dams presenting nonimminent danger.

A. Within a reasonable time after completion of a safety inspection of an impounding structure authorized by § 10.1-607, the Board shall issue a report to the owner of the impounding structure containing its findings and recommendations for correction of any deficiencies which could threaten life or property if not corrected. Owners who have been issued a report containing recommendations for correction of deficiencies shall undertake to implement the recommendations contained in the report

according to the schedule of implementation contained in the report. If an owner fails or refuses to commence or diligently implement the recommendations for correction of deficiencies according to the schedule contained in an issued report, the Director shall have the authority to issue an administrative order directing the owner to commence implementation and completion of such recommendations according to the schedule contained in the report with modifications as appropriate. Within thirty days after being served by personal service or by mail with a copy of an order issued pursuant to this section, any owner shall have the right to petition the Board for a hearing. As part of his petition, a dam owner may submit to the Board his own plan, consistent with regulations adopted pursuant to § 10.1-605, to address the recommendations for correction of deficiencies and the schedule of implementation contained in the report. The Board shall determine if the submitted plan and schedule are sufficient to address deficiencies. A timely filed petition shall stay the effect of the administrative order.

The hearing shall be conducted before the Board or a designated member thereof pursuant to § 2.2-4019. The Board shall have the authority to affirm, modify, amend or cancel the administrative order. Any owner aggrieved by a decision of the Board after a hearing shall have the right to judicial review of the final Board decision pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. The provisions of subsection A of this section notwithstanding, if the Director determines, after the report is issued, that changed circumstances justify reclassifying the deficiencies of an impounding structure as an imminent danger to life or property, the Director may proceed directly under § 10.1-613 for enforcement of his order, and the owner shall have the opportunity to contest the fact based upon which the administrative order was issued.

C. The Director, upon a determination that there is an unsafe condition at an impounding structure, is authorized to cause the lowering or complete draining of such impoundment until the unsafe condition has been corrected at the owner's expense and prior to any authorization to refill.

An owner who fails to comply with the provisions contained in an administrative order of the Department shall be subject to procedures set out in § 10.1-613 and the penalties authorized under §§ 10.1-613.1 and 10.1-613.2.

D. No persons, other than those authorized to maintain an impounding structure, shall interfere with the operation of an impounding structure.

1982, c. 583, § 62.1-115.6; 1986, cc. 9, 615; 1988, c. 891; 1999, c. 110; 2006, c. 30; 2010, c. 270.

§ 10.1-609.1. Installation of IFLOWS gauges.

A soil and water conservation district responsible for the maintenance and operation of a flood control dam shall be permitted to install Integrated Flood Observing and Warning Systems (IFLOWS) gauges and associated equipment, or a device approved by the Department of Emergency Management, while awaiting funds to make structural modifications to correct emergency spillway capacity deficiencies in the dam, identified by the Board in a report issued pursuant to § 10.1-609, when any of the following conditions exist: (i) funds are not available to make such structural modifications to the dam,

(ii) the completion of such structural modifications requires the acquisition of additional property or easements by exercise of the power of eminent domain, or (iii) funds for the IFLOWS equipment or an equivalent device have been appropriated by the General Assembly. Installation of IFLOWS gauges or similar devices shall not affect the regulated status of the dam under the Virginia Dam Safety Act (§ 10.1-604 et seq.). Any IFLOWS gauges and associated equipment shall be installed in a manner approved by the Department of Emergency Management and shall be operated and maintained by the Department of Emergency Management.

1993, c. 709.

§ 10.1-609.2. Prohibited vegetation; certain wetland vegetation allowed.

A. Dam owners shall not permit the growth of trees and other woody vegetation and shall remove any such vegetation from the slopes and crest of embankments and the emergency spillway area and within a distance of 25 feet from the toe of the embankment and abutments of the dam.

B. The provisions of subsection A shall not apply to wetland vegetation, including woody shrubs, trees, and plants, that is growing on a permanent aquatic or safety bench that has been added to the upstream embankment slope of a regulated impounding structure if such vegetation is associated with a wetland mitigation bank or in-lieu fee site that (i) has been approved by the U.S. Army Corps of Engineers and the Department of Environmental Quality and (ii) is the subject of a restrictive covenant or other permanent instrument that specifically protects the particular wetland vegetation from removal and is recorded among the land records of the locality. However, the Department may require the dam owner to remove trees by flush cutting unless the Department determines on the basis of site-specific information that the grubbing of roots is necessary to protect the integrity of the dam in a particular case.

C. Owners failing to maintain their dam in accordance with this section shall be subject to enforcement pursuant to § 10.1-613.

2006, c. 30; 2019, c. 148.

§ 10.1-610. Right of entry.

A. The Board and its agents and employees shall have the right to enter any property at reasonable times and under reasonable circumstances to perform such inspections and tests or to take such other actions it deems necessary to fulfill its responsibilities under this article, including the inspection of dams that may be subject to this article, provided that the Board or its agents or employees make a reasonable effort to obtain the consent of the owner of the land prior to entry.

B. If entry is denied, the Board or its designated agents or employees may make an affidavit under oath before any magistrate whose territorial jurisdiction encompasses the property to be inspected or entered for a warrant authorizing such investigation, tests or other actions. Such warrant shall issue if the magistrate finds probable cause to believe that there is a dam on such property which is not known to be safe. After issuing a warrant under this section, the magistrate shall file the affidavit in the manner prescribed by § 19.2-54. After executing the warrant, the Board or its designated agents or

employees shall return the warrant to the clerk of the circuit court of the city or county wherein the investigation was made.

1982, c. 583, § 62.1-115.7; 1988, c. 891; 2005, c. 117; 2014, c. 354.

§ 10.1-610.1. Monitoring progress of work.

A. During the maintenance, construction, or alteration of any dam or reservoir, the Department shall make periodic inspections for the purpose of securing conformity with the approved plans and specifications. The Department shall require the owner to perform at his expense such work or tests as necessary to obtain information sufficient to enable the Department to determine whether conformity with the approved plans and specifications is being secured.

B. If, after any inspections, investigations, or examinations, or at any time as the work progresses, or at any time prior to issuance of a certificate of approval, it is found by the Director that project modifications or changes are necessary to ensure conformity with the approved plans and specifications, the Director may issue an administrative order to the owner to comply with the plans and specifications. Within 15 calendar days after being served by personal service or by mail with a copy of an order issued pursuant to this section, any owner shall have the right to petition the Board for a hearing. A timely filed petition shall stay the effect of the administrative order. The hearing shall be conducted before the Board or a designated member of the Board pursuant to § 2.2-4019. The Board shall have the authority to affirm, modify, amend, or cancel the administrative order. Any owner aggrieved by a decision of the Board after a hearing shall have the right to judicial review of the final Board decision pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

C. Following the Board hearing, subject to judicial review of the final decision of the Board, if conditions are revealed that will not permit the construction of a safe dam or reservoir, the certificate of approval may be revoked. As part of the revocation, the Board may compel the owner to remove the incomplete structure sufficiently to eliminate any safety hazard to life or property.

2006, c. 30.

§ 10.1-611. Dam safety coordination.

The Board shall coordinate all impoundment safety activities in the Commonwealth, which shall include, but not be limited to: (i) the maintenance of an inventory of all impoundment structures and of all other similar structures that are not regulated under this article to the extent the Board deems necessary; (ii) the maintenance of a repository for record drawings of all such structures to the extent the Board deems necessary; (iii) the maintenance of an inventory of safety inspection reports for each such structure to the extent the Board deems necessary; and (iv) the maintenance of a secondary repository for all dam safety emergency action plans, which are primarily filed with the Department of Emergency Management. The Board shall consult with the Department of Emergency Management in its planning for impoundment safety and shall provide technical assistance in the preparation, updating, and execution of dam safety emergency action plans. It shall establish uniform maintenance-of-records requirements and uniform inspection standards to be applied to all impounding structures in

the Commonwealth and to be recommended for all other similar structures. It may inspect or cause to be inspected state-owned or state-licensed dams on a cost-reimbursable basis at the request of the state agency owning the state-owned dam or of the licensor of the state-licensed dam.

1982, c. 583, § 62.1-115.8; 1986, c. 9; 1988, c. 891; 2012, cc. 70, 230.

§ 10.1-611.1. Soil and Water Conservation District Dam Maintenance, Repair, and Rehabilitation Fund established; Department to manage; Board to expend moneys; regulations.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Soil and Water Conservation District Dam Maintenance, Repair, and Rehabilitation Fund, hereafter referred to as "the Fund." The Fund shall be comprised of moneys appropriated to the Fund by the General Assembly and any other moneys designated for deposit to the Fund from any source, public or private. The Fund shall be established on the books of the Comptroller and the moneys 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 (i) the maintenance and repair of any dams owned by soil and water conservation districts and (ii) the rehabilitation and major repair of Class I and Class II dams owned by soil and water conservation districts, in order to bring such dams into compliance with regulations promulgated pursuant to Article 2 (§ 10.1-604 et seq.) of Chapter 6 of this title. Expenditures from the Fund made under clause (ii) of this subsection may include, but are not limited to, the following repairs to the infrastructure of a dam: increasing the height of a dam, modifying the spillway, and reducing wave erosion of a dam's inside face. 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 of Conservation and Recreation.

B. The Fund shall be administered and managed by the Department of Conservation and Recreation, subject to the right of the Board, following consultation with the Department of Conservation and Recreation, to direct the distribution of moneys in the Fund to particular soil and water conservation districts.

C. The Board is authorized to promulgate regulations for the proper administration of the Fund. Such regulations may include, but are not limited to, the type and amount of financial assistance, the terms and conditions of the assistance, and project eligibility criteria.

1997, c. 356; 2000, cc. 23, 205.

§ 10.1-612. Technical Advisory Committee.

The Board shall establish an Impoundment Safety Technical Advisory Committee to provide technical review. The Committee may make recommendations to the Board.

1982, c. 583, § 62.1-115.9; 1988, c. 891.

§ 10.1-612.1. Temporary stop work order; hearing; injunctive relief.

A. The Director may issue a temporary stop work order on a construction or alteration project if he finds that an owner is constructing or altering a dam without having first obtained the necessary certificate of approval, or if the activities are not in accordance with approved plans and specifications. The order shall include written notice to the owner of the date, time, and location where the owner may appear at a hearing before the Board or a designated member thereof pursuant to § 2.2-4019 to show cause why the temporary order should be vacated. The hearing shall be held within 15 calendar days of the date of the order, unless the owner consents to a longer period.

B. Following the hearing, the Board may affirm or cancel the temporary order and may issue a final order directing that immediate steps be taken to abate or ameliorate any harm or damage arising from the violation. The owner may seek judicial review of the final decision of the Board pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

C. If the violation continues after the Board has issued a final decision and order pursuant to subsection B or a temporary order issued by the Director pursuant to subsection A, the Board may apply for an injunction from the appropriate court. A decision to seek injunctive relief does not preclude other forms of relief, enforcement, or penalties against the owner.

2006, c. 30.

§ 10.1-613. Enforcement.

Any person or legal entity failing or refusing to comply with an order issued pursuant to this article may be compelled to comply with the order in a proceeding instituted in any appropriate court by the Board. The Board shall bring suit in the name of the Commonwealth in any court of competent jurisdiction to enjoin the unlawful construction, modification, operation, or maintenance of any dam regulated under this article. Such court may require the removal or modification of any such dam by mandatory injunction. If the court orders the removal of the dam, the owner shall be required to bear the expenses of such removal.

Should the Board be required to implement and carry out the action, the Board shall charge the owner for any expenses associated with the action, and if the repayment is not made within 90 days after written demand, the Board may bring an action in the proper court to recover this expense. The Board shall file an action in the court having jurisdiction over any owner or the owner's property for the recovery of such costs. A lien in the amount of such costs shall be automatically created on all property owned by any such owner at or proximate to such dam or reservoir.

1982, c. 583, § 62.1-115.10; 1988, c. 891; 2006, c. 30.

§ 10.1-613.1. Criminal penalties.

A. It is unlawful for any owner to knowingly:

1. Operate, construct, or alter a dam without an approval as provided in this article;

2. Violate the terms of an approval, order, regulation, or requirement of the Board or Director under this article; or

3. Obstruct, hinder, or prevent the Board or its designated agents or employees from performing duties under this article.

A violation of any provision of this subsection or this article is a Class 3 misdemeanor.

B. Each day that any such violation occurs after notice of the original violation is served upon the violator by the Board or its designated agents or employees by registered mail shall constitute a separate offense. Upon conviction, the violator is subject to a fine not exceeding $500 per day for each day of the offense, not to exceed a total fine of $25,000, with costs imposed at the discretion of the court. In determining the amount of the penalty, the appropriate court shall consider the degree of harm to the public; whether the violation was knowing or willful; the past conduct of the defendant; whether the defendant should have been on notice of the violation; whether the defendant has taken steps to cease, remove, or mitigate the violation; and any other relevant information.

2006, c. 30.

§ 10.1-613.2. Civil penalties.

In addition to or in lieu of any other forfeitures, remedies, or penalties authorized by law or regulations, any owner violating any provision of this article may be assessed a civil penalty of up to $500 per day by the Board not to exceed a maximum of $25,000.

In setting the civil penalty amount, the Board shall consider (i) the nature, duration, and number of previous instances of failure by the owner to comply with requirements of law relating to dam safety and the requirements of Board regulations and orders; (ii) the efforts of the owner to correct deficiencies or other instances of failure to comply with the requirements of law relating to dam safety and the requirements of Board regulations and orders that are the subject of the proposed penalty; (iii) the cost of carrying out actions required to meet the requirements of law and Board regulations and orders; (iv) the hazard classification of the dam; and (v) other factors deemed appropriate by the Board.

All civil penalties will be assessed by written penalty notice from the Board and given by certified mail or personal service. The notice shall state the specific reasons for the penalty, the number of days the Department considers the owner in violation, and the total amount due. Within 30 days after receipt of a copy of the order issued pursuant to this section, any owner subject to the civil penalty provisions shall have the right to petition the Board, in writing, for a hearing. A timely filed petition shall stay the effect of the penalty notice.

The hearing shall be conducted before the Board or a designated member thereof pursuant to § 2.2-4019. The Board shall affirm, modify, amend, or cancel the penalty notice within 10 days following the conclusion of the hearing. Any owner aggrieved by a decision of the Board after a hearing shall have the right to judicial review of the final Board decision pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

If any civil penalty has not been paid within 45 days after the final Board decision or court order has been served on the violator, the Board shall request the Attorney General to institute a civil action in

the court of any county in which the violator resides or has his principal place of business to recover the amount of the assessment.

Civil penalties assessed under this section shall be paid into the Flood Prevention and Protection Assistance Fund, established pursuant to § 10.1-603.17, and shall be used for the administration of the dam safety program, including for the repair and maintenance of dams.

2006, c. 30.

§ 10.1-613.3. No liability of Board, Department, employees, or agents.

An owner may not bring an action against the Commonwealth, the Board, the Department, or agents or employees of the Commonwealth for the recovery of damages caused by the partial or total failure of a dam or reservoir, or by the operation of a dam or reservoir, or by an act or omission in connection with:

1. Approval of the construction, alteration, or maintenance of a dam or reservoir, or approval of flood-operations plans during or after construction;

2. Issuance or enforcement of orders relating to maintenance or operation of the dam or reservoir;

3. Control or regulation of the dam or reservoir;

4. Measures taken to protect against failure of the dam or reservoir during an emergency;

5. Investigations or inspections authorized under this article;

6. Use of design and construction criteria prepared by the Department; or

7. Determination of the hazard classification of the dam.

2006, c. 30.

§ 10.1-613.4. Liability of owner or operator.

A. Notwithstanding subsection B, nothing in this article, and no order, notice, approval, or advice of the Director or Board shall relieve any owner or operator of an impounding structure from any legal duties, obligations, and liabilities resulting from such ownership or operation. The owner or operator shall be responsible for liability for damage to the property of others or injury to persons, including the loss of life resulting from the operation or failure of an impounding structure. Compliance with this article does not guarantee the safety of an impounding structure or relieve the owner or operator of liability in case of an impounding structure failure.

B. The owner of the land upon which an impounding structure owned, maintained, or operated by a soil and water conservation district is situated shall not be responsible for liability for damages to the property of others or injury to persons, including the loss of life, resulting from the operation or failure of the impounding structure. The provisions of this subsection shall not apply if the damages to the property of others or injury to persons is the result of an act or omission of the landowner unrelated to ownership, maintenance, or operation of the impounding structure.

C. Prior to dissolution or termination of an entity that owns an impounding structure, the entity shall either convey ownership to a third party by deed or other legal conveyance or decommission the impounding structure pursuant to the requirements of the Virginia Impounding Structure Regulations. Prior to conveying ownership, the owner shall notify the Director of such transfer of ownership in accordance with requirements set out in the Virginia Impounding Structure Regulations. Such notice to the Director shall include a warrant by the transferring owner that the transferee is a responsible party capable of discharging all obligations of an impounding structure owner imposed by law and regulations.

D. The Commonwealth, the Board, or the Department shall not be deemed to become an owner of an impounding structure by providing funding or other assistance for maintenance, repair, or decommissioning of an impounding structure owned by another person or entity.

2006, c. 30; 2014, cc. 146, 304, 593.

§ 10.1-613.5. Program administration fees; establishment of Dam Safety Administrative Fund.
A. The Board is authorized to establish and collect application fees from any applicant to be deposited into the Dam Safety Administrative Fund established pursuant to subsection B. Permit applications shall not be reviewed without a full payment of the required fee. Virginia Soil and Water Conservation Districts shall be exempt from all fees established pursuant to this section.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Dam Safety Administrative Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of permit application fees authorized under subsection A and shall be used for the administration of the dam safety program, including actions taken in accordance with §§ 10.1-608, 10.1-609, and 10.1-613. All such funds 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. 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.

2006, c. 30; 2010, c. 13.

Article 3 - WATERSHED IMPROVEMENTS DISTRICTS

§ 10.1-614. Establishment within soil and water conservation district authorized.
Whenever it is found that soil and water conservation or water management within a soil and water conservation district or districts will be promoted by the construction of improvements to check erosion, provide drainage, collect sediment or stabilize the runoff of surface water, a small watershed improvement district may be established within such soil and water conservation district or districts in accordance with the provisions of this article.

1956, c. 668, § 21-112.1; 1964, c. 512; 1973, c. 35; 1977, c. 40; 1988, c. 891.

§ 10.1-615. Petition for establishment; what to set forth.

A. Any twenty-five owners of land lying within the limits of a proposed watershed improvement district, or a majority of such owners if there are fewer than fifty, may file a petition with the directors of the soil and water conservation district or districts in which the proposed watershed improvement district is situated asking that a watershed improvement district be organized to function in the territory described in the petition. The petition shall set forth:

1. The proposed name of the watershed improvement district;

2. That there is need, in the interest of the public health, safety, and welfare, for a watershed improvement district to function in the territory described in the petition;

3. A description of the territory proposed to be organized as a watershed improvement district, which description shall be deemed sufficient if generally accurate;

4. That the territory described in the petition is contiguous and is the same watershed, or is two or more contiguous watersheds;

5. A request that the territory described in the petition be organized as a watershed improvement district;

6. The method for financing the proposed district, whether by means of a tax on all real estate in the proposed district or a service charge on the increase in the fair market value of all real estate in the proposed district caused by the district's project.

B. Land lying within the limits of one watershed improvement district shall not be included in another watershed improvement district.

1956, c. 668, § 21-112.2; 1964, c. 512; 1970, c. 480; 1977, c. 40; 1981, c. 156; 1988, c. 891.

§ 10.1-616. Notice and hearing on petition; determination of need for district and defining boundaries.

Within thirty days after a petition has been filed with the directors of the soil and water conservation district or districts, they shall cause due notice to be given of a hearing upon the practicability and feasibility of creating the proposed watershed improvement district. All owners of land within the proposed watershed improvement district and all other interested parties shall have the right to attend such a hearing and to be heard. If the directors determine from the hearing that there is need, in the interest of the public health, safety, and welfare, for the organization of the proposed watershed improvement district, they shall record their determination and define the boundaries of the watershed improvement district. The provisions of Article 2 (§ 10.1-502 et seq.) of Chapter 5 of this title shall apply, mutatis mutandis, to such proceedings.

1956, c. 668, § 21-112.3; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-617. Determination of whether operation of proposed district is feasible; referendum.

If the district directors determine that a need for the proposed watershed improvement district exists and after they define the boundaries of the proposed district, they shall consider the administrative

feasibility of operating the proposed watershed improvement district. To assist the district directors in determining such question, a referendum shall be held upon the proposition of the creation of the proposed watershed improvement district. Due notice of the referendum shall be given by the district directors. All owners of land lying within the boundaries of the proposed watershed improvement district shall be eligible to vote in the referendum. The district directors may prescribe necessary regulations governing the conduct of the hearing.

1956, c. 668, § 21-112.4; 1964, c. 512; 1970, c. 480; 1988, c. 891; 1995, c. 654.

§ 10.1-618. Ballots used in such referendum.

The question shall be submitted by ballots, which shall contain the following question: "Shall a watershed improvement district be created of the lands described below and lying in the county(ies) or city (ies) of _____ and _____?

[ ] Yes

[ ] No"

The ballot shall set forth the boundaries of the proposed district determined by the Board.

The ballot shall also set forth the method or methods of real estate assessment as determined by the district directors.

1956, c. 668, § 21-112.5; 1970, c. 480, § 21-112.4:1; 1977, c. 40; 1988, c. 891.

§ 10.1-619. Consideration of results of referendum; simple majority vote required.

The results of the referendum shall be considered by the district directors in determining whether the operation of the proposed watershed improvement district is administratively practicable and feasible. The district directors shall not be authorized to determine that operation of the proposed watershed improvement district is administratively practicable and feasible unless a simple majority of the votes cast in the referendum have been cast in favor of the creation of the watershed improvement district.

1956, c. 668, § 21-112.5; 1970, c. 480; 1977, c. 40; 1988, c. 891; 2005, c. 128.

§ 10.1-620. Declaration of organization of district; certification to Board.

If the district directors determine that operation of the proposed watershed improvement district is administratively practicable and feasible, they shall declare the watershed improvement district to be organized and shall record the fact in their official minutes. Following such entry in their official minutes, the district directors shall certify the fact of the organization of the watershed improvement district to the Virginia Soil and Water Conservation Board, and shall furnish a copy of the certification to the clerk of each county or city in which any portion of the watershed improvement district is situated for recordation in the public land records of each such county or city. The watershed improvement district shall thereupon constitute a political subdivision of this Commonwealth.

1956, c. 668, § 21-112.6; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-621. Establishment of watershed improvement district situated in more than one soil and water conservation district.

If a proposed watershed improvement district is situated in more than one soil and water conservation district, copies of the petition shall be presented to the directors of all the soil and water conservation districts in which the proposed watershed improvement district is situated, and the directors of all affected soil and water conservation districts shall act jointly as a board of directors with respect to all matters concerning the watershed improvement district, including its organization. The watershed improvement district shall be organized in the same manner and shall have the same powers and duties as a watershed improvement district situated entirely in one soil and water conservation district.

1956, c. 668, § 21-112.7; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-622. Inclusion of additional territory.

Petitions for including additional territory within an existing watershed improvement district may be filed with directors of the soil and water conservation district or districts in which the watershed improvement district is situated, and in such cases the provisions hereof for petitions to organize the watershed improvement district shall be observed to the extent deemed practicable by the district directors. In referenda upon petitions for such inclusion, all owners of land situated in the proposed additional territory shall be eligible to vote. No additional territory shall be included in an existing watershed improvement district unless owners of land representing two-thirds of the acreage proposed to be included vote in favor thereof.

1956, c. 668, § 21-112.8; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-623. Governing body of district; trustees.

The directors of the soil and water conservation district or districts in which the watershed improvement district is situated shall be the governing body of the watershed improvement district. They may appoint, in consultation with and subject to the approval of the Virginia Soil and Water Conservation Board, three trustees who shall be owners of land within the watershed improvement district. The trustees shall exercise the administrative duties and powers delegated to them by the directors of the soil and water conservation district or districts. The trustees shall hold office at the will of the directors of the soil and water conservation district or districts and the Virginia Soil and Water Conservation Board. The trustees shall designate a chairman and may change such designation. One of the trustees may be selected as treasurer and shall be responsible for the safekeeping of the funds of the watershed improvement district. When a watershed improvement district lies in more than one soil and water conservation district, the directors of all such districts shall act jointly as the governing body of the watershed improvement district.

1956, c. 668, § 21-112.9; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-624. Officers, agents and employees; surety bonds; annual audit.

The trustees may, with the approval of the directors of the soil and water conservation district or districts, employ such officers, agents, and other employees as they require, and shall determine their qualifications, duties and compensation. The district directors shall provide for the execution of surety bonds for the treasurer and such other trustees, officers, agents, and employees as shall be entrusted

with funds or property of the watershed improvement district, and shall publish an annual audit of the accounts of receipts and disbursements of the watershed improvement district.

1956, c. 668, § 21-112.10; 1964, c. 512; 1970, c. 480; 1988, c. 891.

§ 10.1-625. Status and general powers of district; power to levy tax or service charge; approval of landowners required.

A watershed improvement district shall have all of the powers of the soil and water conservation district or districts in which the watershed improvement district is situated, and in addition shall have the authority to levy and collect a tax or service charge to be used for the purposes for which the watershed improvement district was created. No tax shall be levied nor service charge imposed under this article unless two-thirds of the owners of land, which two-thirds owners shall also represent ownership of at least two-thirds of the land area in such district, voting in a referendum called and held in the manner prescribed in this article, approve the levy of a tax to be expended for the purposes of the watershed improvement district.

1956, c. 668, § 21-112.11; 1964, c. 512; 1981, c. 156; 1988, c. 891; 1995, c. 654.

§ 10.1-626. Levy of tax or service charge; when district in two or more counties or cities; landbooks certified to treasurers.

A. On or before March 1 of each year, the trustees of the watershed improvement district shall make an estimate of the amount of money they deem necessary to be raised for the year in such district (i) for operating expenses and interest payments and (ii) for amortization of debt, and, after approval by the directors of the soil and water conservation district or districts, and the Virginia Soil and Water Conservation Board, shall establish the tax rate or service charge rate necessary to raise such amount of money. The tax rate or service charge rate to be applied against the amount determined under subsection C or D of this section shall be determined before the date fixed by law for the determination of the general levy by the governing body of the counties or cities in which the district is situated.

B. The trustees of a watershed improvement district which imposes a tax on real estate or a service charge based on the increase in the fair market value of real estate caused by the district's project shall make up a landbook of all properties subject to the watershed improvement district tax or service charge on forms similar to those used by the county or city affected.

A separate landbook shall be made for each county or city if the district is located in more than one county or city. The landbook or landbooks of all properties subject to the district tax or the service charge, along with the tax rate or service charge rate fixed by the governing body of the district for that year, shall be certified to the appropriate county or city treasurer or treasurers, and filed in the clerk's office of such locality or localities, by the governing body of the watershed improvement district on or before the day the county or city landbook is required to be so certified. Such landbook or landbooks shall be subject to the same retention requirements as the county or city landbook.

C. For tax purposes under this article, the assessed valuation of all real estate located in a watershed improvement district shall be the same fair market valuation that appears in the most recent landbook

for the county, city, or town wherein the subject property is located. However, in a watershed improvement district which is located in two or more counties or cities and in which there is a disparity of assessed valuations between the counties or cities, the governing body of the watershed improvement district may petition the judge or judges of the circuit courts in which the district is located to appoint one or more persons to assess all of the real estate in the district. The compensation of such person or persons shall be prescribed by the governing body of the district and paid out of the funds of the district.

D. In districts authorized to impose a service charge, the service charge shall be based on the initial increase in fair market value resulting from a project. In order to determine the initial increase in fair market value, the trustees shall subtract the fair market value of each parcel without the project, as shown in the landbook for the year immediately preceding the year in which the project was begun from the fair market value of the parcel following completion of the project. The fair market value of each parcel with the project shall be determined by the district directors in a reasonable manner. The values so determined shall be the values against which the service charge rate is imposed so long as any bonds remain outstanding, and thereafter unless a change is approved by the district directors. If an additional improvement is made while any bonds are outstanding, the district directors may cause a new increase in fair market values to be computed to reflect such improvement. However, while any bonds are outstanding, such newly computed values shall not be used unless the total new increase in fair market values in the district is equal to or greater than the previously determined increase in fair market values. Within thirty days after determining the increase in fair market value for all real estate in the watershed improvement district resulting from the project, the trustees shall mail a notice of such determination to the owner of record of each parcel in the district.

E. The assessments and determinations of increase in fair market value made under the provisions of this section may be used only for the watershed improvement district tax or service charge and shall in no way affect any county or city assessment or levies.

F. Any person, firm, or corporation aggrieved by any determination of increased value made under any provision of this article shall apply in writing to the trustees of the watershed improvement district within sixty days after the mailing of the notice required in subsection D of this section. Such application shall specify the increased value in the opinion of the applicant and the basis for such opinion. The trustees shall rule on all such applications within 120 days after mailing the notice required in subsection D of this section. If any applicant remains aggrieved by the determination of increased value after such a ruling, he may apply to the circuit court of the county or city wherein the land is situated for a correction of such determination of increased value, within the time limits and following the procedures set out in Article 5 (§ 58.1-3980 et seq.) of Chapter 39 of Title 58.1.

G. The provisions of this section shall not be used to change the method of real estate assessment in any watershed improvement district established prior to January 1, 1976.

1981, c. 156, § 21-112.12:1; 1988, c. 891.

§ 10.1-627. Collection of tax or service charge; proceeds kept in special account; expenditures from such account.

The special tax or service charge levied shall be collected at the same time and in the same manner as county or city taxes with the proceeds therefrom to be kept in a separate account by the county or city treasurer identified by the official name of the watershed improvement district. Expenditures from such account may be made with the approval of the directors of the soil and water conservation district or districts on requisition from the chairman and the treasurer of the board of trustees of the watershed improvement district.

1956, c. 668, § 21-112.13; 1964, c. 512; 1970, c. 480; 1981, c. 156; 1988, c. 891.

§ 10.1-628. Fiscal powers of governing body; may poll landowners on question of incurring indebtedness or issuing bonds.

The governing body of any watershed improvement district shall have power, subject to the conditions and limitations of this article, to incur indebtedness, borrow funds, and issue bonds of such watershed improvement district. The circuit court of the county or city in which any portion of the watershed improvement district is located, upon the petition of a majority of the members of the governing body of the watershed improvement district, shall order a referendum at any time not less than thirty days from the date of such order, which shall be designated therein, to determine whether the governing body shall incur indebtedness or issue bonds for one or more of the purposes for which the watershed improvement district was created.

The referendum shall be conducted in the manner prescribed by this article for the conduct of other referendums in the watershed improvement districts.

1956, c. 668, §§ 21-112.14, 21-112.15; 1964, c. 512; 1988, c. 891; 1995, c. 654.

§ 10.1-629. Order authorizing governing body to incur indebtedness or issue bonds.

If the owners of at least two-thirds of the land area in the district vote in the election, and if at least two-thirds of the voters in the election vote in favor of incurring the indebtedness or issuing bonds, the circuit court or courts shall enter an order authorizing the governing body of the watershed improvement district to incur indebtedness or issue bonds for one or more of the purposes for which the district was created.

1956, c. 668, § 21-112.16; 1988, c. 891.

§ 10.1-630. Type of indebtedness incurred or bonds issued.

The type of indebtedness incurred or bonds issued shall be that adopted by the governing body of the watershed improvement district and approved by the Virginia Soil and Water Conservation Board.

1956, c. 668, § 21-112.17; 1964, c. 512; 1988, c. 891; 1996, cc. 105, 819.

§ 10.1-631. Annual tax for payment of interest or to amortize indebtedness or bonds.

The governing body of the watershed improvement district shall, if necessary to pay the interest on the indebtedness or bonds or to amortize such indebtedness or bonds, levy an annual tax or service

charge in the manner prescribed by § 10.1-626 on all the real estate in the watershed improvement district subject to local taxation, to satisfy such obligations. This tax, irrespective of any approvals required pursuant to § 10.1-614, shall be sufficient to pay interest and to amortize such indebtedness or bonds at the times required.

1956, c. 668, § 21-112.18; 1973, c. 35; 1981, c. 156; 1988, c. 891; 1996, cc. 105, 819.

§ 10.1-632. Powers granted additional to powers of soil and water conservation district; soil and water conservation district to continue to exercise its powers.

The powers herein granted to watershed improvement districts shall be additional to the powers of the soil and water conservation district or districts in which the watershed improvement district is situated; and the soil and water conservation district or districts shall be authorized, notwithstanding the creation of the watershed improvement district, to continue to exercise their powers within the watershed improvement district.

1956, c. 668, § 21-112.19; 1964, c. 512; 1988, c. 891.

§ 10.1-633. Power to incur debts and accept gifts, etc.; watershed improvement district to have same powers as soil and water conservation district.

A watershed improvement district shall have power, as set forth in this article, to incur debts and repay them over the period of time and at the rate or rates of interest, not exceeding eight percent, that the lender agrees to. Any watershed improvement district may accept, receive and expend gifts, grants or loans from whatever source received. In addition, they shall have the same powers, to the extent necessary, within the watershed improvement district that the soil and water conservation district or districts in which the same is located exercise or may possess.

1956, c. 668, § 21-112.20; 1964, c. 512; 1977, c. 40; 1988, c. 891.

§ 10.1-634. Question to be submitted to qualified voters; approval required.

In connection with any referendum held pursuant to the provisions of this article, the directors shall also provide for the submission of the question involved to the qualified voters of the watershed improvement district and any question required to be submitted to referendum hereunder shall only be deemed to be approved, if approved both by vote of the landowners of the district as here above required and by a majority vote of the qualified voters of the district voting in such referendum.

1973, c. 35, § 21-112.20:1; 1988, c. 891.

§ 10.1-634.1. Conduct of referenda.

A. Except as provided in subsection B, the referenda authorized or required by this article shall be conducted pursuant to regulations prescribed by the Virginia Soil and Water Conservation Board and not as provided for under § 24.2-684.

B. Referenda authorized or required by this article prior to the regulations referred to in subsection A becoming effective shall be conducted by the district directors of the soil and water conservation district in which the watershed improvement district is situated pursuant to the provisions of this article as

they were effective on January 1, 1995, and Article 5 (§ 24.2-681 et seq.) of Chapter 6 of Title 24.2. The costs of holding referenda under this subsection shall be paid by the requesting landowners.

1995, c. 654; 1996, c. 983.

§ 10.1-635. Power of eminent domain.

In addition to any other powers conferred on it by law, any watershed improvement district organized under the provisions of this article shall be authorized to acquire by eminent domain any lands, property rights, franchises, rights-of-way, easements or other property deemed necessary or convenient for the efficient operation of the district. Such proceedings shall be in accordance with and subject to the provisions of the laws of the Commonwealth applicable to the exercise of the power of eminent domain in the name of a public service company and subject to the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1.

1958, c. 411, § 21-112.21; 1988, c. 891; 2003, c. 940.

Article 4 - CONSERVATION, SMALL WATERSHEDS FLOOD CONTROL AND AREA DEVELOPMENT FUND

§ 10.1-636. Definitions.

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

"Board" means the Virginia Soil and Water Conservation Board.

"Facility" means any structures, foundations, appurtenances, spillways, lands, easements and rights-of-way necessary to (i) store additional water for immediate or future use in feasible flood prevention sites; (ii) create the potential to store additional water by strengthening the foundations and appurtenances of structures in feasible flood prevention sites; or (iii) store water in sites not feasible for flood prevention programs, and to properly operate and maintain such stores of water or potential stores of water.

"Fund" or "revolving fund" means the Conservation, Small Watersheds Flood Control and Area Development Fund.

"Storing additional water in feasible flood prevention sites" means storage of water for other than flood prevention purposes above the capacity of any given structure to hold water for the purpose of flood prevention in flood prevention sites within a flood prevention project having a favorable benefit-cost ratio where it is economically feasible to provide the capacity to store additional water or the potential for additional water storage capacity.

1970, c. 591, § 21-11.2; 1988, c. 891.

§ 10.1-637. Fund continued; administrative control.

The "Conservation, Small Watersheds Flood Control and Area Development Fund," is continued and shall be administered and used as hereinafter provided. The revolving fund shall also consist of any moneys appropriated by the General Assembly.

The administrative control of the fund and the responsibility for the administration of the provisions of this article are hereby vested in the Virginia Soil and Water Conservation Board. The Board is authorized to establish guidelines for the proper administration of the fund and the provisions of this article.

1970, c. 591, §§ 21-11.1, 21-11.4; 1988, c. 891.

§ 10.1-638. Purposes for which fund to be used.

A. The Board is authorized, with the concurrence of the State Treasurer, to order the State Comptroller to make loans from the revolving fund to any county, city, town, water authority, utility or service authority or special taxing district, hereafter referred to as the borrower, having the legal capacity and organizational arrangements necessary for obtaining, giving security for, and raising revenues for repaying authorized loans, and for operating and maintaining facilities for which the loan is made. The money loaned shall be used by the borrower for facilities to store additional water in feasible flood prevention sites or to store water in sites not feasible for flood prevention programs. The amount of any loan or the sum of any outstanding loans to any one borrower shall not exceed $500,000 without the written approval of the Governor.

B. To promote the economic growth of the Commonwealth, the Board, after public hearing and with the written approval of the Governor, may invest funds from the revolving fund in facilities to store additional water in feasible flood prevention sites for municipal, industrial, and other beneficial uses where localities fail to do so, or in facilities to create the potential to store additional water in feasible flood prevention sites where impoundment projects are being developed to less than optimum potential, thereby allowing the enlargement of such impoundments as the need arises. Such action may be initiated by a request from the soil and water conservation district or districts encompassing such water storage sites.

C. The Board may draw on the revolving fund to meet maintenance expenses incident to the proper management and operation of facilities resulting from the investments authorized by subsection B above. In addition, the Board may draw on the revolving fund for emergency repairs to the above facilities and facilities constituting the security for loans made by authority of subsection A above. The Board shall not provide funds for emergency repairs to facilities constituting security for loans unless it appears to the Board that funds for repairs are not available from other sources.

D. The Board is authorized to purchase, operate and maintain necessary machinery and other equipment suitable for engineering and other operations incident to soil and water conservation and other purposes of the Board. The Board shall have the custody and control of the machinery and other equipment, and shall provide storage for it, and it shall be available to the districts upon terms the Board prescribes. In addition to other terms the Board may prescribe, it shall have authority to execute rental-purchase contracts with individual districts for the equipment, whereby the title to machinery and other equipment purchased under authority of this law may be transferred to such district when approved by the Board. The Board may, in its discretion, sell the same to any person upon terms and

conditions it may deem proper. The proceeds derived from the sale or rental of machinery, provided for in this section and in § 10.1-552, shall be paid into the revolving fund.

E. The Board is authorized to make loans from the revolving fund to any soil and water conservation district for the purchase of necessary machinery and other equipment suitable for engineering and other operations incident to soil and water conservation and other purposes of the district. Terms for loans to districts under this section shall be prescribed by the Board, and payments of interest and principal shall be made to the State Treasurer and credited to the revolving fund.

1970, c. 591, § 21-11.3; 1972, c. 821; 1982, c. 68; 1988, c. 891.

§ 10.1-639. Conditions for making loan.

The Board shall authorize the making of a loan under the provisions of § 10.1-638 A only when the following conditions exist:

1. An application for the loan has been submitted by the borrower in the manner and form specified by the Board, setting forth in detail the need for the storage of water, the amount of the loan requested and the use to which the loan shall be applied as well as any efforts made to secure funds from any other source, and such other information required by the Board. The application shall be first submitted to the soil and water conservation district or districts encompassing the watershed wherein the proceeds of the loan would be applied. When the application is approved by the district or districts, the application shall be forwarded to the Board.

2. The borrower agrees and furnishes assurance, satisfactory to the Board, that it will satisfactorily maintain any structure financed in whole or in part through the loans provided by this article.

3. The purpose for which the loan is sought is to acquire land, easements and rights-of-way, or engineering or legal services necessary for a water storage facility or project, or to construct the water storage facility itself.

If the requested loan or any part thereof is for the purpose of acquiring land, easements and rights-of-way, then the loan or part thereof designated for such purpose shall not be granted in the absence of evidence satisfactory to the Board that the borrower requesting the loan will in fact acquire the land, easements or rights-of-way if the loan is granted.

1970, c. 591, § 21-11.5; 1988, c. 891.

§ 10.1-640. Political subdivisions may borrow from other sources.

Any entity eligible under § 10.1-638 A may borrow funds as provided in this article before, simultaneously, or after borrowing funds from other sources for the same purpose for which funds are borrowed under the provisions of this article.

1970, c. 591, § 21-11.11; 1988, c. 891.

§ 10.1-641. Powers of Board in aid of the provisions of § 10.1-638.

The Board shall have the following powers to effectuate the provisions of § 10.1-638 B:

1. To expend funds from the revolving fund for field surveys and investigations, notwithstanding the possibility that the Board may subsequently determine that the proposed investment is not feasible.

2. To make and execute contracts and other instruments necessary or convenient to the construction, improvement, operation and maintenance of facilities.

3. To make agreements with and act as agent for the United States, or any of its agencies, or for this Commonwealth or any of its agencies, or any local government in connection with the acquisition, construction, maintenance, operation, or administration of any project in which the Board has invested funds; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this Commonwealth or any of its agencies or from any other source; and to use or expend such moneys, services, materials, or other contributions in carrying on its investment function.

4. To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, and improve any properties acquired.

1970, c. 591, § 21-11.13; 1988, c. 891.

§ 10.1-642. Record of applications for loans and action taken.

A record of each application for a loan pursuant to § 10.1-639 received by the Board and the action taken thereon shall be open to public inspection at the office of the Board.

1970, c. 591, § 21-11.8; 1988, c. 891; 2007, c. 637.

§ 10.1-643. Period of loan; interest rate; loan shall constitute a lien.

Any loan made pursuant to the provisions of § 10.1-638 A may be made for any period not to exceed twenty years and shall bear interest at the rate of one percent annually for the first ten years or until such time as water stored under the provisions of this article is used by the borrower for the purpose stated in the application for the loan, if such use occurs within the first ten years. Interest on the loan for the second ten-year period plus the balance of the first ten-year period during which water was used, if any, shall bear interest at a rate set jointly by the Board and the State Treasury Board. Such interest rate shall conform as nearly as possible to the interest on bonds sold for water development or similar purposes within the Commonwealth within the last six months prior to setting such interest rate, taking into consideration any fluctuations of the money market which may have occurred subsequent to the last sale of such bonds within the six-month period. If no such bonds have been sold within the six-month period, the interest rate shall be set to conform as nearly as possible with the rate charged by the commercial money market for such or similar purposes. However, when the attendant facilities, such as but not limited to a filtration plant, pumping station, and pipelines, necessary for the use of the water stored cost the borrower more than $100,000, interest on the loan for the second ten-year period or the ten-year period plus the balance of the first ten-year period during which water was used, if any, shall be at the rate of three percent annually. Any borrower receiving a loan under the provisions of this article shall agree to repay the loan in equal annual installments of principal together with interest

at the applicable rate on the unpaid balance of the loan. Payments of interest and principal shall be made to the State Treasurer and credited to the revolving fund, and evidence of debt taken for such loan shall be deposited with the State Treasurer and kept by him. Whenever a loan is made in accordance with the provisions of this article, a lien is hereby created against all of the funds and income of the borrower, as well as upon any real or personal property acquired with loan proceeds. Prepayment of the principal of any such loan, in whole or in part, may be made by the borrower without penalty; however, the borrower shall be liable for interest accrued on the principal at the time of prepayment.

1970, c. 591, § 21-11.6; 1988, c. 891.

§ 10.1-644. Recovery of money due to fund.

If a borrower defaults on any payment due the State Treasurer pursuant to § 10.1-643 or on any other obligation incurred pursuant to the provisions of this article, the amounts owed to the fund by the borrower may be recovered by the State Comptroller transferring to the revolving fund the amount of the payment due to the revolving fund from the distribution of state funds to which the defaulting borrower may be entitled pursuant to any state law; or, any money which ought to be paid into the revolving fund may be recoverable with interest by the Commonwealth, in the name of the Board, on motion in the Circuit Court of the City of Richmond. The Attorney General shall institute and prosecute such proceedings after a request for such action has been made by the Board.

1970, c. 591, § 21-11.7; 1988, c. 891.

§ 10.1-645. Limits on expenditures authorized under § 10.1-638 B; sale of resulting facilities; sale of stored water; renting facilities.

Expenditures by the Board for any one facility under the provisions of § 10.1-638 B shall not exceed $500,000 without the written approval of the Governor for construction and seeding, acquisition of land, easements, and rights-of-way, engineering costs, appraisal costs, legal services, and other costs related to the facility. The Board is authorized to sell any facility resulting from an expenditure authorized by § 10.1-638 B to any entity to whom a loan could be made pursuant to the provisions of § 10.1-638 A under the terms and conditions prescribed hereinafter. Conveyances of any such facilities shall be executed by the chairman of the Board acting pursuant to a resolution of the Board and shall be approved by the Governor and Attorney General as to form and substance. Upon the transfer of title of such facilities, the purchasing entity shall grant an easement or right-of-way to the appropriate soil and water conservation district to assure the continued operation, inspection and repair of the works of improvement on the land sold, and in all cases, the purchasing entity shall agree to maintain the facility in a satisfactory manner. The Board may contract with an entity eligible to borrow from the revolving fund pursuant to § 10.1-638 A, for the sale of water stored at facilities constructed by expenditures pursuant to § 10.1-638 B. However, it is not the intent of this article to provide a means whereby the Commonwealth shall store and sell water to such entities; therefore, unless extenuating circumstances prevail, such contract shall be entered into with the understanding that such entities shall acquire the rights of the Board in the water storage facility by a future date agreeable to the Board and entity. The Board may lease such facilities to any agency or entity of government, corporation, organization or

individual for recreational purposes or any other uses which will not impair the facilities' value for future water supply. Proceeds from the sale of stored water or sale or rental of such facilities shall be placed in the revolving fund.

1970, c. 591, § 21-11.9; 1972, c. 821; 1988, c. 891.

§ 10.1-646. Purchase price and terms of sales authorized by § 10.1-645.

When an entity, as the term is used in § 10.1-645, agrees to purchase a facility and the rights incident thereto resulting from the storing of additional water in feasible flood prevention sites or the strengthening of foundations and appurtenances of feasible flood prevention sites in which the Board has invested pursuant to § 10.1-638 B, the purchase price shall be the total expenditure from the revolving fund by the Board for such facility plus a surcharge of three percent annually on all funds expended for the facility, other than funds expended pursuant to § 10.1-638 C, from the date of expenditure to the date of purchase by the purchasing entity.

With the approval of the Board, the purchasing entity may finance the purchase price, or any portion thereof, of the facility under the terms and conditions of §§ 10.1-638 A and 10.1-643, and the provisions of §§ 10.1-643 and 10.1-644 shall apply, mutatis mutandis, to such financing. If a purchasing entity finances the purchase of a facility as hereinabove provided, such purchasing entity shall not be precluded from applying for a loan authorized by § 10.1-638 A to the limit imposed by that section to complete any facility purchased to store additional water.

1970, c. 591, § 21-11.10; 1972, c. 821; 1988, c. 891.

§ 10.1-647. Disposition of facilities financed under article when part of debt remains outstanding.

No facility financed from the revolving fund under the provisions of this article, in whole or in part, shall be sold by an entity when any portion of the debt owed to the revolving fund remains unpaid. However, if the purchaser is an entity having the taxing power, then such sale may be made even though all or a portion of the debt to the revolving fund remains unpaid, if the purchasing entity agrees to assume the obligation to repay the outstanding debt and all interest thereon. If such sale is approved by the Board, then the purchasing entity shall be solely liable for the obligations undertaken by the principal debtor, and the principal debtor shall be released therefrom.

1970, c. 591, § 21-11.12; 1988, c. 891.

§ 10.1-648. Acquisition of lands, easements, and rights-of-way.

A. The Board, in addition to the provisions of § 10.1-638, may use funds from the revolving fund to pay the cost of the purchase of needed lands, easements, and rights-of-way, or to share the costs thereof with soil and water conservation districts for soil and water conservation and flood control needs when the following conditions have been met:

1. The program of work for the project has been found by the Board to be feasible, practicable and will promote the health, safety, and general welfare of the people of the Commonwealth;

2. The soil and water conservation district or its cosponsors of the project have obtained a minimum of seventy-five percent of the necessary lands, easements, and rights-of-way in the project, or portion of a project (subwatershed) for which funds are requested prior to the use of funds for this purpose;

3. The district and its cosponsors, if any, have submitted a plat to the Board showing the lands, easements and rights-of-way previously acquired, as well as the remaining lands, easements and rights-of-way necessary to the project but not acquired. In addition, the Board may require any other information which it deems necessary. The district and cosponsors shall certify to the Board that funds are unobtainable from any other source to acquire the remaining land, easements, and rights-of-way necessary to the project, in whole or in part;

4. The funds to be used for lands, easements, and rights-of-way shall be granted to the district or cosponsor of the project in whose name the land, easement, or right-of-way shall be recorded.

B. No later than ten years from the purchase of lands and rights-of-way with the funds provided by this section for soil and water conservation and flood control needs, or upon the completion of the watershed project, or a portion of the project (subwatershed) and upon written demand of the owners, their heirs or assigns from whom such land and rights-of-way were acquired, such property shall be reconveyed by the district or cosponsor to the former owners, their heirs or assigns, upon repayment of the original purchase price, without interest, unless such lands and rights-of-way are granted or retained for public purposes as hereinafter provided. After ten years, and no later than twelve years after the purchase date of lands and rights-of-way with the funds provided by this section, unless such lands and rights-of-way are granted or retained for public purposes or reconveyed as provided above, it shall be the duty of the district or cosponsor, to sell the property purchased wholly or partially from the funds provided by this section. The Board shall specify the terms for any such sale. Upon the sale or reconveyance of such property, the district or cosponsor shall remit to the Board a pro rata share of the proceeds of such sale or repayment pursuant to a reconveyance, equal to the percentage of the total cost of the acquisition of such property from any allocation of funds made hereunder and all such remittances shall be deposited to the revolving fund. The district or cosponsor of the project in whose name the acquisition of the land or rights-of-way to be sold is recorded shall retain any easement or right-of-way to assure the continued operation, maintenance, inspection, and repair of the works of improvement constructed on the land to be sold. The district and cosponsor of a project, with the approval of the Board, may grant for public purposes fee title to lands and rights-of-way acquired under the provisions of this section to any political subdivision, including a cosponsor, an agency of the state or federal government, or a regional park authority.

1970, c. 591, § 21-11.14; 1988, c. 891.

§ 10.1-649. Sale to Board of property and rights-of-way acquired by condemnation.

For the purpose of § 10.1-638 B the Board is authorized to purchase property and rights-of-way condemned for maintaining, protecting, or providing supplies of water and for water storage purposes

under §§ 15.2-1904, 15.2-1907, 15.2-5114, and 21-118 and the condemnor is authorized to sell any such property or rights-of-way to the Board.

1970, c. 591, § 21-11.15; 1988, c. 891; 2003, c. 940.

Article 5 - STREAM RESTORATION ASSISTANCE PROGRAM

§ 10.1-650. Definitions.

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

"Continual accelerated erosion" means a rapid increase in the erosion rate of stream banks caused by loss of vegetation, diversion of water by constrictions, undermining, and other resultant effects of severe floods.

"Natural streams" means nontidal waterways which are part of the natural topography. They usually maintain a continuous or seasonal flow during the year and are characterized as being irregular in cross-section with a meandering course. Constructed channels such as drainage ditches or swales shall not be considered natural streams.

"Program" means the Stream Restoration Assistance Program.

"Stream restoration" means any combination of structural and vegetative measures which may be taken to restore, stabilize, and protect a natural stream which has been damaged by severe flooding and is consequently subject to continual accelerated erosion or other detrimental effects. The term shall also include measures to return stream flow to its original channel in cases where the stream course has been changed as a result of flooding.

1981, c. 450, § 21-11.23; 1988, c. 891.

§ 10.1-651. Establishment and administration of Program.

The Stream Restoration Assistance Program is continued to protect the natural streams of the Commonwealth. The Program shall aid in the stabilization and protection of natural streams which have been severely damaged by naturally occurring flooding events. The Program shall be administered by the Virginia Soil and Water Conservation Board in cooperation with soil and water conservation districts and local governments throughout the Commonwealth. To assist in the development of the Program, the Board shall seek the advisory opinion of the State Water Control Board and the Department of Wildlife Resources.

1981, c. 450, § 21-11.22; 1988, c. 891; 2020, c. 958.

§ 10.1-652. Program applicability.

The Stream Restoration Assistance Program shall apply only to natural nontidal streams which have been damaged as a result of naturally occurring flooding events. Streams which have been damaged by land-disturbing activities, vehicular traffic, or other human causes shall not be eligible for assistance under the Program.

1981, c. 450, § 21-11.24; 1988, c. 891.

§ 10.1-653. Application for assistance.

Landowners who wish to receive assistance under the Program shall apply to the Virginia Soil and Water Conservation Board. The Board shall provide copies of the applications to the chairmen of the soil and water districts, where applicable, and the local governing bodies having jurisdiction in the area where the damage has occurred.

1981, c. 450, § 21-11.25; 1988, c. 891.

§ 10.1-654. Damage inspections and reports.

A. Upon receipt of an application for assistance, the Board shall schedule a field inspection of the affected stream segment to determine the extent of damages. Such field inspections should be scheduled and coordinated so that affected landowners and appropriate conservation districts and local government officials can participate.

B. Following the field inspection, the Board shall prepare an inspection report which includes a recommendation concerning the extent to which the Commonwealth should assist the applicant in restoring the stream.

C. Draft copies of the inspection report shall be submitted to the applicant, persons who attended the field inspection, and chairmen of conservation districts and local governing bodies having jurisdiction in the area where the damage has occurred. These persons shall be given forty-five days to submit written comments and recommendations concerning the report. The final report shall contain copies of all written comments and recommendations received.

1981, c. 450, § 21-11.26; 1988, c. 891.

§ 10.1-655. Types of assistance.

Upon approval of an application for assistance, the Board may provide technical and financial assistance to the applicant according to the following guidelines:

1. The Board shall maintain a technical staff to recommend stream restoration measures, to estimate costs, and to prepare engineering plans and specifications which may be used to implement such measures. The actual preparation of plans and specifications shall not be undertaken until the applicant certifies that adequate funding is available, and that the plans will be implemented within one year after all necessary permits are obtained.

2. Financial assistance may be provided to applicants to the extent that funds for that purpose are available to the Board. In no case shall such assistance exceed fifty percent of the total cost of construction. Funds shall not be disbursed until the Board has made a final inspection and has determined that all work is adequately completed in accordance with the plans and specifications.

3. To receive financial assistance, applicants must certify that they have explored and exhausted all other possible funding sources. In cases where a national disaster area has been declared, no funding shall be provided under the Program until it is determined to what extent the federal government will participate in stream restoration along the segments under consideration.

When requests for financial assistance exceed available resources, the Board shall set priorities and allocate funds as it deems appropriate to accomplish the maximum benefit.

1981, c. 450, § 21-11.28; 1988, c. 891.

§ 10.1-656. Board action on assistance requests.

The Board shall consider requests for technical and financial assistance from landowners whose property borders on or contains natural streams which have been damaged by flooding. Upon consideration of the application, inspection report, and any other relevant information, the Board shall determine whether or not assistance shall be provided, and the type and extent of assistance to be provided. In making such determinations, the Board shall consider the potential for continual accelerated erosion of the stream banks in the future and other possible detrimental effects to the stream which may result if no corrective measures are undertaken. In cases where it is determined that there is not likely to be accelerated stream bank erosion or other significant detrimental effects in the future, the assistance request shall not be approved.

1981, c. 450, § 21-11.27; 1988, c. 891.

§ 10.1-657. Account established.

An account designated as the Stream Restoration Account shall be established to provide grants to landowners who make requests under the Stream Restoration Assistance Programs. The Board may seek money from federal and private sources to establish and maintain the Stream Restoration Fund.

1981, c. 450, § 21-11.29; 1988, c. 891.

Article 6 - Comprehensive Flood Control Program

§ 10.1-658. State interest in flood control.

A. The General Assembly declares that storm events and rising tidal waters cause recurrent flooding of Virginia's land resources and result in the loss of life, damage to property, unsafe and unsanitary conditions and the disruption of commerce and government services, placing at risk the health, safety and welfare of those citizens living in flood-prone areas of the Commonwealth. Flood waters disregard jurisdictional boundaries, and the public interest requires the management of flood-prone areas in a manner which prevents injuries to persons, damage to property and pollution of state waters.

B. The General Assembly, therefore, supports and encourages those measures which prevent, mitigate and alleviate the effects of stormwater surges and flooding, and declares that the expenditure of public funds and any obligations incurred in the development of flood control and other civil works projects, the benefits of which may accrue to any county, municipality or region in the Commonwealth, are necessary expenses of local and state government.

1989, cc. 468, 497; 2020, c. 493.

§ 10.1-659. Flood protection programs; coordination.

The provisions of this chapter shall be coordinated with the Virginia Coastal Resilience Master Plan and federal, state, and local flood prevention and water quality programs to minimize loss of life,

property damage, and negative impacts on the environment. This program coordination shall include but not be limited to the following: flood prevention, flood plain management, small watershed protection, dam safety, shoreline erosion and public beach preservation, and soil conservation programs of the Department of Conservation and Recreation; the construction activities of the Department of Transportation, including projects that result in hydrologic modification of rivers, streams, and flood plains; the nontidal wetlands, water quality, Chesapeake Bay Preservation Area criteria, stormwater management, erosion and sediment control, and other water management programs of the State Water Control Board; the Virginia Coastal Zone Management Program at the Department of Environmental Quality; forested watershed management programs of the Department of Forestry; the agricultural stewardship, farmland preservation, and disaster assistance programs of the Department of Agriculture and Consumer Services; the statewide building code and other land use control programs of the Department of Housing and Community Development; the habitat management programs of the Virginia Marine Resources Commission; the hazard mitigation planning and disaster response programs of the Department of Emergency Management; the fish habitat protection programs of the Department of Wildlife Resources; the mineral extraction regulatory program of the Department of Mines, Minerals and Energy; the flood plain restrictions of the Virginia Waste Management Board; flooding-related research programs of the state universities; local government assistance programs of the Virginia Soil and Water Conservation Board; the Virginia Antiquities Act program of the Department of Historic Resources; and any other state agency programs deemed necessary by the Director, the Chief Resilience Officer of the Commonwealth, and the Special Assistant to the Governor for Coastal Adaptation and Protection. The Department shall also coordinate with soil and water conservation districts, Virginia Cooperative Extension agents, and planning district commissions, and shall coordinate and cooperate with localities in rendering assistance to such localities in their efforts to comply with the planning, subdivision of land, and zoning provisions of Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2. The Director and either the Special Assistant to the Governor for Coastal Adaptation and Protection or the Chief Resilience Officer shall jointly hold meetings of representatives of these programs, entities, and localities in order to determine, coordinate, and prioritize the Commonwealth's efforts and expenditures to increase flooding resilience. The Department shall cooperate with other public and private agencies having flood plain management programs and shall coordinate its responsibilities under this article and any other law. These activities shall constitute the Commonwealth's flood prevention and protection program.

1989, cc. 468, 497; 2012, cc. 785, 819; 2013, cc. 756, 793; 2020, cc. 493, 958.

Chapter 7 - SHORELINE EROSION AND PUBLIC BEACH PRESERVATION

Article 1 - SHORE EROSION CONTROL

§ 10.1-700. Definition.

As used in this article, the term "shore erosion" means the process of destruction by the action of water, wind, or ice of the land bordering any body of water including all rivers and the tidal waters of the Commonwealth.

1972, c. 855, § 21-11.17; 1988, c. 891.

§ 10.1-701. Duties of Department.

The Department shall have the duty to:

1. Coordinate shore erosion control programs of all state agencies and institutions to implement practical solutions to shoreline erosion problems; however, such coordination shall not restrict the statutory authority of the individual agencies having responsibilities relating to shore erosion control;

2. Secure the cooperation and assistance of the United States and any of its agencies to protect waterfront property from destructive shore erosion;

3. Evaluate the effectiveness and practicability of current shore erosion control programs; and

4. Explore all facets of the problems and alternative solutions to determine if other practical and economical methods and practices may be devised to control shore erosion.

1972, c. 855, § 21-11.18; 1980, c. 368; 1988, c. 891.

§ 10.1-702. Shore Erosion Advisory Service.

The Department is authorized to assist in carrying out the coordination responsibility of shore erosion control programs as herein assigned, and to establish a Shoreline Erosion Advisory Service.

1972, c. 855, § 21-11.19; 1980, c. 368; 1988, c. 891.

§ 10.1-703. Cooperation and coordination with Virginia Institute of Marine Science.

The Department shall cooperate and coordinate with the Virginia Institute of Marine Science of The College of William and Mary in Virginia for research, training and technical advice on erosion-related problems.

1980, c. 368, § 21-11.20; 1988, c. 891.

§ 10.1-704. Use of dredged material for beach nourishment; priority.

The beaches of the Commonwealth shall be given priority consideration as sites for the disposal of that portion of dredged material determined to be suitable for beach nourishment. The Secretary of Natural Resources shall have the responsibility of determining whether the dredged material is suitable for beach nourishment.

1987, cc. 220, 231, § 21-11.16:1; 1988, c. 891.

Article 2 - PUBLIC BEACH CONSERVATION AND DEVELOPMENT ACT

§ 10.1-705. Definitions.

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

"Agency of this Commonwealth" includes the government of this Commonwealth and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this Commonwealth.

"Board" means the Board of Conservation and Recreation.

"Develop" or "development" means the replenishment and restoration of existing public beaches.

"Erosion" means the process of destruction by the action of wind, water, or ice of the land bordering the tidal waters of the Commonwealth.

"Government" or "governmental" includes the government of this Commonwealth, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

"Locality" means a county, city or town.

"Program" means the provisions of the Public Beach Conservation and Development Act.

"Public beach" means a sandy beach located on a tidal shoreline suitable for bathing in a county, city or town and open to indefinite public use.

"Reach" means a shoreline segment wherein there is mutual interaction of the forces of erosion, sediment transport and accretion.

"United States" or "agencies of the United States" includes the United States of America, the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

1980, c. 428, § 10-217; 1984, c. 750; 1985, c. 448; 1988, c. 891; 2003, cc. 79, 89.

§ 10.1-706. Duties of the Department.

The Department shall:

1. Promote understanding of the value of public beaches and the causes and effects of erosion;

2. Make available information concerning erosion of public beaches;

3. Encourage research and development of new erosion control techniques and new sources of sand for public beach enhancement.

1980, c. 428, § 10-216; 1984, c. 235; 1988, c. 891.

§ 10.1-707. Board duties; allocation of funds.

A. The Board shall (i) review the financial needs of localities for implementation of this article; (ii) determine successful applicants; (iii) determine the equitable allocation of funds among participating localities except for allocations provided for in the current general appropriations act; and (iv) oversee local implementation of approved projects.

B. The Department shall provide the Board with staff assistance and shall maintain necessary financial records.

1980, c. 428, § 10-218; 1984, cc. 739, 750; 1985, c. 448; 1986, c. 152; 1988, c. 891; 1989, cc. 656, 660; 2003, cc. 79, 89.

§ 10.1-708. Relationship of Board and Director; guidelines.

The Board shall be responsible for the allocation of the grant fund established in § 10.1-709. The Board shall submit the names of recipient localities to the Director and the Director shall disburse funds to designated localities. The Board may establish guidelines governing application procedures, allocations or implementation standards.

1980, c. 428, § 10-219; 1984, c. 750; 1988, c. 891.

§ 10.1-709. Establishment of fund; unexpended money.

A. A special fund to be known as the Public Beach Maintenance and Development Fund shall be established to provide grants to local governments covering up to one-half of the costs of erosion abatement measures designed to conserve, protect, improve, maintain and develop public beaches. No grants to any locality shall exceed 30 percent of the money appropriated to such fund for the biennium unless otherwise provided for in the current general appropriations act. Money appropriated from such fund shall be matched equally by local funds. Federal funds shall not be used by localities to match money given from the fund. Localities may, however, combine state and local funds to match federal funds for purposes of securing federal grants. Interest earned or moneys received by the Fund shall remain in the Fund and be credited to it. Any money remaining in the Fund at the close of the first fiscal year of a biennium shall not revert to the general fund and shall be reappropriated and allotted.

B. Up to $250,000 per year of the money deposited to the Fund including interest accrued may be used for the Board's administrative and operating expenses including but not limited to expenses of the Board and its members, and expenses related to duties outlined in §§ 10.1-701, 10.1-702, 10.1-703, 10.1-706, and 10.1-707. All such expenditures shall be subject to approval by the Board.

C. Money that remains unobligated by the Board from the fund at the end of the biennium for which it was appropriated shall be retained and shall become a Special Emergency Assistance Fund to be used at the discretion of the Governor for the emergency conservation and development of public beaches damaged or destroyed by an unusually severe storm, hurricane or other natural disaster.

1980, c. 428, § 10-220; 1982, c. 329; 1986, c. 152; 1988, c. 891; 2003, cc. 79, 89.

§ 10.1-710. Guidelines for allocation of grant funds.

The Board shall consider the following when selecting localities for program participation and in determining grant allocations:

1. Present and future beach ownership;

2. Erosion caused by public navigational works;

3. Intensity of use;

4. Availability of public beaches in the vicinity;

5. Evidence of a locality's ability and willingness to develop a long-term capacity to combat erosion;

6. Rate of erosion;

7. Actions of a locality which lead to, or may result in, the erosion of beaches; and

8. Such other matters as the Board shall deem sufficient for consideration.

1980, c. 428, § 10-221; 1984, c. 235; 1988, c. 891.

§ 10.1-711. Local erosion advisory commissions.

In order to qualify for the program, localities shall establish local erosion advisory commissions which shall determine local erosion problems, review the locality's erosion control projects, suggest strategies for the future, and assess program implementation.

1980, c. 428, § 10-222; 1984, c. 235; 1988, c. 891.

Chapter 8 - HISTORIC LANDMARKS AND MONUMENTS [Repealed]

§§ 10.1-800 through 10.1-817. Repealed.

Repealed by Acts 1989, c. 656.

Chapter 9 - VIRGINIA ANTIQUITIES ACT [Repealed]

§§ 10.1-900 through 10.1-906. Repealed.

Repealed by Acts 1989, c. 656.

Chapter 10 - CAVE PROTECTION ACT

§ 10.1-1000. Definitions.

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

"Board" means the Cave Board.

"Cave" means any naturally occurring void, cavity, recess, or system of interconnecting passages beneath the surface of the earth or within a cliff or ledge including natural subsurface water and drainage systems, but not including any mine, tunnel, aqueduct, or other man-made excavation, which is large enough to permit a person to enter. The word "cave" includes or is synonymous with cavern, sinkhole, natural pit, grotto, and rock shelter.

"Cave life" means any rare or endangered animal or other life form which normally occurs in, uses, visits, or inhabits any cave or subterranean water system.

"Commercial cave" means any cave utilized by the owner for the purposes of exhibition to the general public as a profit or nonprofit enterprise, wherein a fee is collected for entry.

"Gate" means any structure or device located to limit or prohibit access or entry to any cave.

"Material" means all or any part of any archaeological, paleontological, biological, or historical item including, but not limited to, any petroglyph, pictograph, basketry, human remains, tool, beads, pottery, projectile point, remains of historical mining activity or any other occupation found in any cave.

"Owner" means a person who owns title to land where a cave is located, including a person who owns title to a leasehold estate in such land, and including the Commonwealth and any of its agencies, departments, boards, bureaus, commissions, or authorities, as well as counties, municipalities, and other political subdivisions of the Commonwealth.

"Person" means any individual, partnership, firm, association, trust, or corporation or other legal entity.

"Sinkhole" means a closed topographic depression or basin, generally draining underground, including, but not restricted to, a doline, uvala, blind valley, or sink.

"Speleogen" means an erosional feature of the cave boundary and includes or is synonymous with anastomoses, scallops, rills, flutes, spongework, and pendants.

"Speleothem" means a natural mineral formation or deposit occurring in a cave. This includes or is synonymous with stalagmite, stalactite, helectite, shield, anthodite, gypsum flower and needle, angel's hair, soda straw, drapery, bacon, cave pearl, popcorn (coral), rimstone dam, column, palette, flowstone, et cetera. Speleothems are commonly composed of calcite, epsomite, gypsum, aragonite, celestite, and other similar minerals.

1979, c. 252, § 10-150.12; 1988, c. 891.

§ 10.1-1001. Cave Board; qualifications; officers.

A. The Cave Board is continued within the Department of Conservation and Recreation and shall consist of the Director of the Department of Historic Resources, or his designee, serving in an ex officio capacity and eleven citizens of Virginia appointed by the Governor for four-year terms. Appointments shall be made on the basis of activity and knowledge in the conservation, exploration, study and management of caves.

B. The Cave Board shall meet at least three times a year. Six members shall constitute a quorum for the transaction of business. The Board shall annually elect a chairman, vice-chairman and recording secretary and such other officers as the Board deems necessary.

1979, c. 433, §§ 9-152.1, 9-152.2; 1980, c. 745; 1984, c. 750; 1985, c. 448; 1988, c. 891; 1989, c. 656.

§ 10.1-1002. Powers and duties of Cave Board.

A. The Cave Board may perform all tasks necessary to carry out the purposes of this chapter, including the following:

1. Accept any gift, money, security or other source of funding and expend such funds to effectuate the purposes of this chapter.

2. Serve as an advisory board to any requesting state agency on matters relating to caves and karst.

3. Conduct and maintain an inventory of publicly owned caves in Virginia.

4. Provide cave management expertise and service to requesting public agencies and cave owners.

5. Maintain a current list of all significant caves in Virginia and report any real and present danger to such caves.

6. Provide cave data for use by state and other governmental agencies.

7. Publish or assist in publishing articles, pamphlets, brochures or books on caves and cave-related concerns.

8. Facilitate data gathering and research efforts on caves.

9. Advise civil defense authorities on the present and future use of Virginia caves in civil defense.

10. Advise on the need for and desirability of a state cave recreation plan.

11. Inform the public about the value of cave resources and the importance of preserving them for the citizens of the Commonwealth.

B. The Cave Board shall have the duty to:

1. Protect the rare, unique and irreplaceable minerals and archaeological resources found in caves.

2. Protect and maintain cave life.

3. Protect the ground water flow which naturally occurs in caves from water pollution.

4. Protect the integrity of caves that have unique characteristics or are exemplary natural community types.

5. Make recommendations to interested state agencies concerning any proposed rule, regulation or administrative policy which directly affects the use and conservation of caves in this Commonwealth.

6. Study any matters of special concern relating to caves and karst.

1979, c. 252, § 10-150.11; 1979, c. 433, §§ 9-152.1, 9-152.3 to 9-152.5; 1980, c. 745; 1984, cc. 734, 750; 1985, c. 448; 1988, c. 891.

§ 10.1-1003. Permits for excavation and scientific investigation; how obtained; penalties.

A. In addition to the written permission of the owner required by § 10.1-1004 a permit shall be obtained from the Department of Conservation and Recreation prior to excavating or removing any archaeological, paleontological, prehistoric, or historic feature of any cave. The Department shall issue a permit to excavate or remove such a feature if it finds with the concurrence of the Director of the Department of Historic Resources that it is in the best interest of the Commonwealth and that the applicant meets the criteria of this section. The permit shall be issued for a period of two years and may be renewed upon expiration. Such permit shall not be transferable; however, the provisions of this section shall not preclude any person from working under the direct supervision of the permittee.

B. All field investigations, explorations, or recovery operations undertaken under this section shall be carried out under the general supervision of the Department and in a manner to ensure that the maximum amount of historic, scientific, archaeologic, and educational information may be recovered and preserved in addition to the physical recovery of objects.

C. A person applying for a permit pursuant to this section shall:

1. Be a historic, scientific, or educational institution, or a professional or amateur historian, biologist, archaeologist or paleontologist, who is qualified and recognized in these areas of field investigations.

2. Provide a detailed statement to the Department giving the reasons and objectives for excavation or removal and the benefits expected to be obtained from the contemplated work.

3. Provide data and results of any completed excavation, study, or collection at the first of each calendar year.

4. Obtain the prior written permission of the owner if the site of the proposed excavation is on privately owned land.

5. Carry the permit while exercising the privileges granted.

D. Any person who fails to obtain a permit required by subsection A hereof shall be guilty of a Class 1 misdemeanor. Any violation of subsection C hereof shall be punished as a Class 3 misdemeanor, and the permit shall be revoked.

E. The provisions of this section shall not apply to any person in any cave located on his own property.

1979, c. 252, § 10-150.16; 1982, c. 81; 1984, c. 750; 1988, c. 891; 1989, c. 656.

§ 10.1-1004. Vandalism; penalties.

A. It shall be unlawful for any person, without express, prior, written permission of the owner, to:

1. Break, break off, crack, carve upon, write, burn, or otherwise mark upon, remove, or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or any natural material which may be found therein, whether attached or broken, including speleothems, speleogens, and sedimentary deposits. The provisions of this section shall not prohibit minimal disturbance for scientific exploration.

2. Break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to any cave, even though entrance thereto may not be gained.

3. Remove, deface, or tamper with a sign stating that a cave is posted or citing provisions of this chapter.

4. Excavate, remove, destroy, injure, deface, or in any manner disturb any burial grounds, historic or prehistoric resources, archaeological or paleontological site or any part thereof, including relics, inscriptions, saltpeter workings, fossils, bones, remains of historical human activity, or any other such features which may be found in any cave, except those caves owned by the Commonwealth or designated as Commonwealth archaeological sites or zones, and which are subject to the provisions of the Virginia Antiquities Act (§ 10.1-2300 et seq.).

B. Entering or remaining in a cave which has not been posted by the owner shall not by itself constitute a violation of this section.

C. Any violation of this section shall be punished as a Class 1 misdemeanor.

D. The provisions of this section shall not apply to an owner of a cave on his own property.

1979, c. 252, § 10-150.13; 1982, c. 81; 1988, c. 891.

§ 10.1-1005. Pollution; penalties.

A. It shall be unlawful for any person, without express, prior, written permission of the owner, to store, dump, litter, dispose of or otherwise place any refuse, garbage, dead animals, sewage, or toxic substances harmful to cave life or humans, in any cave or sinkhole. It shall also be unlawful to burn within a cave or sinkhole any material which produces any smoke or gas which is harmful to any naturally occurring organism in any cave.

B. Any violation of this section shall be punished as a Class 1 misdemeanor.

1979, c. 252, § 10-150.14; 1982, c. 81; 1988, c. 891.

§ 10.1-1006. Disturbance of naturally occurring organisms; scientific collecting permits; penalties.

A. It shall be unlawful to remove, kill, harm, or otherwise disturb any naturally occurring organisms within any cave, except for safety or health reasons; however, scientific collecting permits may be obtained from the Department.

B. Any violation of this section shall be punished as a Class 3 misdemeanor.

1979, c. 252, § 10-150.15; 1988, c. 891.

§ 10.1-1007. Sale of speleothems; penalties.

It shall be unlawful for any person to sell or offer for sale any speleothems in this Commonwealth, or to export them for sale outside the Commonwealth. Any violation of this section shall be punished as a Class 1 misdemeanor.

1979, c. 252, § 10-150.17; 1982, c. 81; 1988, c. 891.

§ 10.1-1008. Liability of owners and agents limited; sovereign immunity of Commonwealth not waived.

Neither the owner of a cave nor his authorized agents acting within the scope of their authority are liable for injuries sustained by any person using the cave for recreational or scientific purposes if no charge has been made for the use of the cave, notwithstanding that an inquiry as to the experience or expertise of the individual seeking consent may have been made.

Nothing in this section shall be construed to constitute a waiver of the sovereign immunity of the Commonwealth or any of its boards, departments, bureaus, or agencies.

1979, c. 252, § 10-150.18; 1988, c. 891.

Chapter 10.1 - VIRGINIA CONSERVATION EASEMENT ACT

§ 10.1-1009. Definitions.

As used in this chapter, unless the context otherwise requires:

"Conservation easement" means a nonpossessory interest of a holder in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations

or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

"Holder" means a charitable corporation, charitable association, or charitable trust which has been declared exempt from taxation pursuant to 26 U.S.C. § 501(c)(3) and the primary purposes or powers of which include: (i) retaining or protecting the natural or open-space values of real property; (ii) assuring the availability of real property for agricultural, forestal, recreational, or open-space use; (iii) protecting natural resources; (iv) maintaining or enhancing air or water quality; or (v) preserving the historic, architectural or archaeological aspects of real property.

"Public body" means any entity defined in § 10.1-1700.

"Third party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust which, although eligible to be a holder, is not a holder.

1988, cc. 720, 891.

§ 10.1-1010. Creation, acceptance and duration.

A. A holder may acquire a conservation easement by gift, purchase, devise or bequest.

B. No right or duty in favor of or against a holder and no right in favor of a person having a third-party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

C. A conservation easement shall be perpetual in duration unless the instrument creating it otherwise provides a specific time. For all easements, the holder shall (i) meet the criteria in § 10.1-1009 and (ii) either have had a principal office in the Commonwealth for at least five years, or be a national organization in existence for at least five years which has an office in the Commonwealth and has registered and is in good standing with the State Corporation Commission. Until a holder has met these requirements, the holder may co-hold a conservation easement with another holder that meets the requirements.

D. An interest in real property in existence at the time a conservation easement is created is not impaired by it unless the owner of the interest is a party to the conservation easement or consents to it in writing.

E. No conservation easement shall be valid and enforceable unless the limitations or obligations created thereby conform in all respects to the comprehensive plan at the time the easement is granted for the area in which the real property is located.

F. This chapter does not affect the power of the court to modify or terminate a conservation easement in accordance with the principles of law and equity, or in any way limit the power of eminent domain

as possessed by any public body. In any such proceeding the holder of the conservation easement shall be compensated for the value of the easement.

1988, cc. 720, 891; 2000, c. 182; 2003, c. 1014; 2004, c. 364.

§ 10.1-1011. Taxation.

A. Where an easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.) by its terms is perpetual, neither the interest of the holder of a conservation easement nor a third-party right of enforcement of such an easement shall be subject to state or local taxation nor shall the owner of the fee be taxed for the interest of the holder of the easement.

B. Assessments of the fee interest in land that is subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.) shall reflect the reduction in the fair market value of the land that results from the inability of the owner of the fee to use such property for uses terminated by the easement. To ensure that the owner of the fee is not taxed on the value of the interest of the holder of the easement, the fair market value of such land (i) shall be based only on uses of the land that are permitted under the terms of the easement and (ii) shall not include any value attributable to the uses or potential uses of the land that have been terminated by the easement.

C. Notwithstanding the provisions of subsection B, land which is (i) subject to a perpetual conservation easement held pursuant to this chapter or the Open-Space Land Act (§ 10.1-1700 et seq.), (ii) devoted to open-space use as defined in § 58.1-3230, and (iii) in any county, city or town which has provided for land use assessment and taxation of any class of land within its jurisdiction pursuant to § 58.1-3231 or § 58.1-3232, shall be assessed and taxed at the use value for open space, if the land otherwise qualifies for such assessment at the time the easement is dedicated. If an easement is in existence at the time the locality enacts land use assessment, the easement shall qualify for such assessment. Once the land with the easement qualifies for land use assessment, it shall continue to qualify so long as the locality has land use assessment.

1988, cc. 720, 891; 1993, c. 390; 1998, c. 487.

§ 10.1-1012. Notification.

Whenever any instrument conveying a conservation easement is recorded after July 1, 1988, the party responsible for recording it or his agent shall mail certified copies thereof, together with any attached plats and a notice specifying the date and place of recordation, to the commissioner of revenue for the local jurisdiction in which the real property subject thereto is located, the Director of the Department of Conservation and Recreation, the Virginia Outdoors Foundation, and to any other public body named in such instrument. Whenever any conservation easement is on lands that are part of or contain a historic place or landmark listed on either the National Register of Historic Places or the Virginia Landmarks Register, any notice required by this section shall also be given to the Director of the Department of Historic Resources.

1988, cc. 720, 891; 2011, c. 207.

§ 10.1-1013. Standing.

An action affecting a conservation easement may be brought by:

1. An owner of an interest in real property burdened by the easement;

2. A holder of the easement;

3. A person having an express third-party right of enforcement;

4. The Attorney General of the Commonwealth;

5. The Virginia Outdoors Foundation;

6. The Virginia Historic Landmarks Board;

7. The local government in which the real property is located; or

8. Any other governmental agency or person with standing under other statutes or common law.

1988, cc. 720, 891.

§ 10.1-1014. Validity.

A conservation easement is valid even though:

1. It is not appurtenant to an interest in real property;

2. It can be or has been assigned to another holder;

3. It is not of a character that has been recognized traditionally at common law;

4. It imposes a negative burden;

5. It imposes affirmative obligations upon the owner of an interest in the burdened property or upon the holder;

6. The benefit does not touch or concern real property; or

7. There is no privity of estate or of contract.

Except as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements.

1988, cc. 720, 891.

§ 10.1-1015. Conveyance to the Commonwealth.

Whenever any holder as defined in this chapter, or the successors or assigns thereof, shall cease to exist, any conservation easement and any right of enforcement held by it shall vest in the Virginia Outdoors Foundation, unless the instrument creating the easement otherwise provides for its transfer to some other holder or public body. In an easement vested in the Virginia Outdoors Foundation by operation of the preceding sentence, the Foundation may retain it or thereafter convey it to any other public body or any holder the Foundation deems most appropriate to hold and enforce such interest in accordance with the purpose of the original conveyance of the easement.

1988, cc. 720, 891.

§ 10.1-1016. Savings clause.

Nothing herein shall in any way affect the power of a public body under any other statute, including without limitation the Virginia Outdoors Foundation and the Virginia Historic Landmarks Board, to acquire and hold conservation easements or affect the terms of any such easement held by any public body.

1988, cc. 720, 891.

Chapter 10.2 - Virginia Land Conservation Foundation

§ 10.1-1017. Foundation created.

There is hereby created the Virginia Land Conservation Foundation, hereinafter referred to as the Foundation, a body politic and corporate to have such powers and duties as hereinafter provided.

1992, c. 426; 1999, cc. 900, 906.

§ 10.1-1018. Virginia Land Conservation Board of Trustees; membership; terms; vacancies; compensation and expenses.

A. The Foundation shall be governed and administered by a Board of Trustees. The Board shall have a total membership of 19 members that shall consist of 17 citizen members and two ex officio voting members as follows: four citizen members, who may be members of the House of Delegates, to be appointed by the Speaker of the House of Delegates and, if such members are members of the House of Delegates, in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; two citizen members, who may be members of the Senate, to be appointed by the Senate Committee on Rules; 11 nonlegislative citizen members, one from each congressional district, to be appointed by the Governor; and the Secretary of Natural Resources, or his designee, and the Secretary of Agriculture and Forestry, or his designee, to serve ex officio with voting privileges. Nonlegislative citizen members shall be appointed for four-year terms, except that initial appointments shall be made for terms of one to four years in a manner whereby no more than six members shall have terms that expire in the same year. Legislative members and the ex officio member shall serve terms coincident with their terms of office. 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. All members may be reappointed. However, no Senate member shall serve more than two consecutive four-year terms, no House member shall serve more than four consecutive two-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. Nonlegislative citizen members shall have experience or expertise, professional or personal, in one or more of the following areas: natural resource protection and conservation, construction and real estate development, natural habitat protection, environmental resource inventory and identification, forestry management, farming, farmland preservation, fish and wildlife management, historic preservation, and outdoor recreation. At least one of the nonlegislative citizen members shall be a farmer. Members of the Board shall

post bond in the penalty of $5,000 with the State Comptroller prior to entering upon the functions of office.

B. The Secretary of Natural Resources shall serve as the chairman of the Board of Trustees. The chairman shall serve until his successor is appointed. The members appointed as provided in subsection A shall elect a vice-chairman annually from among the members of the Board. A majority of the members of the Board serving at any one time shall constitute a quorum for the transaction of business. The board shall meet at the call of the chairman or whenever a majority of the members so request.

C. Trustees of the Foundation shall receive no compensation for their services. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties on behalf of the Foundation 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 Conservation and Recreation.

D. The chairman of the Board and any other person designated by the Board to handle the funds of the Foundation shall give bond, with corporate surety, in such penalty as is fixed by the Governor, conditioned upon the faithful discharge of his duties. The premium on the bonds shall be paid from funds available to the Foundation for such purpose.

E. The Board shall seek assistance in developing grant criteria and advice on grant priorities and any other appropriate issues from a task force consisting of the following agency heads or their designees: the Director of the Department of Conservation and Recreation, the Commissioner of Agriculture and Consumer Services, the State Forester, the Director of the Department of Historic Resources, the Director of the Department of Wildlife Resources and the Executive Director of the Virginia Outdoors Foundation. The Board may request any other agency head to serve on or appoint a designee to serve on the task force.

1992, c. 426; 1999, cc. 900, 906; 2000, cc. 21, 294, 494, 1053; 2003, c. 885; 2005, cc. 633, 758; 2006, c. 45; 2020, c. 958.

§ 10.1-1018.1. Reporting.

The chairman of the Board shall submit to the Governor and the General Assembly, including the Chairmen of the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, the Senate Committee on Finance, and the Senate Committee on Agriculture, Conservation and Natural Resources, and to the Director of the Department of Planning and Budget an executive summary and report of the interim activity and work of the Board on or before December 15 of each even-numbered year. The document shall report on the status of the Foundation and its Fund including, but not limited to, (i) implementation of its strategic plan; (ii) land conservation targeting tools developed for the Foundation; (iii) descriptions of projects that received funding; (iv) a description of the geographic distribution of land protected as provided in § 10.1-1021.1; (v) expenditures from, interest earned by, and financial obligations of the Fund; and (vi) progress made toward recognized state and regional land conservation goals. The executive summary and report 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.

2005, c. 633.

§ 10.1-1019. Executive secretary; land management.

A. The Director of the Department of Conservation and Recreation shall serve as executive secretary to the Foundation and shall be responsible for providing technical assistance and performing any administrative duties that the Foundation may direct.

B. The Department of Conservation and Recreation shall administer the Foundation's lands as if such lands were departmental lands, and the regulations established by the Director for the management and protection of departmental lands shall apply to real estate held by the Foundation. The Department's conservation officers commissioned under § 10.1-115 shall have jurisdiction on all of the Foundation's lands and waters.

1992, c. 426; 2000, c. 1053.

§ 10.1-1020. Virginia Land Conservation Fund; purposes of Foundation.

A. The Foundation shall establish, administer, manage, including the creation of reserves, and make expenditures and allocations from a special, nonreverting fund in the state treasury to be known as the Virginia Land Conservation Fund, hereinafter referred to as the Fund. The Foundation shall establish and administer the Fund solely for the purposes of:

1. Acquiring fee simple title or other rights, including the purchase of development rights, to interests or privileges in property for the protection or preservation of ecological, cultural or historical resources, lands for recreational purposes, state forest lands, and lands for threatened or endangered species, fish and wildlife habitat, natural areas, agricultural and forestal lands and open space; and

2. Providing grants to state agencies, including the Virginia Outdoors Foundation, and matching grants to other public bodies and holders for acquiring fee simple title or other rights, including the purchase of development rights, to interests or privileges in real property for the protection or preservation of ecological, cultural or historical resources, lands for recreational purposes, and lands for threatened or endangered species, fish and wildlife habitat, natural areas, agricultural and forestal lands and open space. The Board shall establish criteria for making grants from the Fund, including procedures for determining the amount of each grant and the required match. The criteria shall include provisions for grants to localities for purchase of development rights programs.

Interests in land acquired as provided in subdivision 1 of this subsection may be held by the Foundation or transferred to state agencies or other appropriate holders. Whenever a holder acquires any interest in land other than a fee simple interest as a result of a grant or transfer from the Foundation, such interest shall be held jointly by the holder and a public body. Whenever a holder acquires a fee simple interest in land as a result of a grant or transfer from the Foundation, a public body shall hold an open space easement in such land.

B. The Fund shall consist of general fund moneys and gifts, endowments or grants from the United States government, its agencies and instrumentalities, and funds from any other available sources, public or private. Such moneys, gifts, endowments, grants or funds from other sources may be either restricted or unrestricted. For the purposes of this chapter, "restricted funds" shall mean those funds received by the Board to which specific conditions apply; "restricted funds" shall include, but not be limited to, general obligation bond moneys and conditional gifts. "Unrestricted funds" shall mean those received by the Foundation to which no specific conditions apply; "unrestricted funds" shall include, but not be limited to, moneys appropriated to the Fund by the General Assembly to which no specific conditions are attached and unconditional gifts.

Beginning July 1, 2019, the Foundation shall conduct a grant round each year to identify and rank projects for the subsequent fiscal year. Biennially in the odd-numbered years, the Foundation shall assume an amount of funding of the grant program as provided in the general appropriation act. Biennially in the even-numbered years, the Foundation shall assume the most recent amount of funding of the grant program as specified in the most recently enacted general appropriation act. On or before December 15 of each year, the chairman of the Board of Trustees shall provide copies of such project rankings to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance. At the beginning of each fiscal year, the Foundation shall finalize grant awards based on the funded level appropriated for that year, as provided in subsections C and D. Any ranked project that does not receive a proposed grant as a result of an insufficiency in appropriated funds shall be eligible to participate in a subsequent grant round.

C. In any fiscal year for which the Fund is appropriated less than $10 million, and after an allocation for administrative expenses has been made as provided in subsection G, the remaining unrestricted funds in the Fund shall be allocated as follows:

1. Twenty-five percent shall be transferred to the Virginia Outdoors Foundation's Open-Space Lands Preservation Trust Fund to be used as provided in § 10.1-1801.1; and

2. Seventy-five percent shall be divided equally among the following four grant uses: (i) natural area protection; (ii) open spaces and parks, including but not limited to, land for public hunting, fishing or wildlife watching; (iii) farmlands and forest preservation; and (iv) historic area preservation. Of the amount allocated as provided in this subdivision, at least one third shall be used to secure easements to be held or co-held by a public body.

D. In any fiscal year for which the Fund is appropriated $10 million or more, and after an allocation for administrative expenses has been made as provided in subsection G, the remaining unrestricted funds in the Fund shall be allocated as follows:

1. Twenty-five percent shall be transferred to the Virginia Outdoors Foundation's Open-Space Lands Preservation Trust Fund to be used as provided in § 10.1-1801.1; and

2. The remaining funds shall be divided equally among the following five grant uses: (i) natural area protection; (ii) open spaces and parks, including but not limited to, land for public hunting, fishing, or

wildlife watching; (iii) farmland preservation; (iv) forestland conservation; and (v) historic area preservation.

E. Any moneys remaining in the Fund at the end of a biennium shall remain in the Fund, and shall not revert to the general fund. Interest earned on moneys received by the Fund other than bond proceeds shall remain in the Fund and be credited to it. Any funds transferred to the Open-Space Lands Preservation Trust Fund pursuant to this section and not disbursed or committed to a project by the end of the fiscal year in which the funds were transferred shall be returned to the Virginia Land Conservation Fund and shall be redistributed among the authorized grant uses during the next grant cycle.

F. A portion of the Fund, not to exceed twenty percent of the annual balance of unrestricted funds, may be used to develop properties purchased in fee simple, or through the purchase of development rights, with the assets of the Fund for public use including, but not limited to, development of trails, parking areas, infrastructure, and interpretive projects or to conduct environmental assessments or other preliminary evaluations of properties prior to the acquisition of any property interest.

G. Up to $250,000 per year of the interest generated by the Fund may be used for the Foundation's administrative expenses, including, but not limited to, the expenses of the Board and its members, development of the Foundation's strategic plan, development and maintenance of an inventory of properties as provided in subdivision 1 b of § 10.1-1021, development of a needs assessment for future expenditures as provided in subdivision 1 c of § 10.1-1021, and fulfillment of reporting requirements. All such expenditures shall be subject to approval by the Board of Trustees.

H. The Comptroller shall maintain the restricted funds and the unrestricted funds in separate accounts.

I. For the purposes of this section, "public body" shall have the meaning ascribed to it in § 10.1-1700, and "holder" shall have the meaning ascribed to it in § 10.1-1009.

1992, c. 426; 1999, cc. 900, 906; 2000, cc. 494, 1053; 2006, c. 227; 2007, cc. 77, 673; 2019, c. 539.

§ 10.1-1021. Powers of the Foundation.

In order to carry out its purposes, the Foundation shall have the following powers and duties:

1. To prepare a comprehensive plan that recognizes and seeks to implement all of the purposes for which the Foundation is created. In preparing this plan, the Foundation shall:

a. Develop a strategic plan for the expenditure of unrestricted moneys received by the Fund. In developing a strategic plan for expending unrestricted moneys from the Fund, the Board of Trustees shall establish criteria for the expenditure of such moneys. The plan shall take into account the purposes for which restricted funds have been expended or earmarked. Such criteria may include:

(1) The ecological, outdoor recreational, historic, agricultural and forestal value of the property;

(2) An assessment of market values;

(3) Consistency with local comprehensive plans;

(4) Geographical balance of properties and interests in properties to be purchased;

(5) Availability of public and private matching funds to assist in the purchase;

(6) Imminent danger of loss of natural, outdoor, recreational or historic attributes of a significant portion of the land;

(7) Economic value to the locality and region attributable to the purchase; and

(8) Advisory opinions from local governments, state agencies or others;

b. Develop an inventory of those properties in which the Commonwealth holds a legal interest for the purpose set forth in subsection A of § 10.1-1020;

c. Develop a needs assessment for future expenditures from the Fund. In developing the needs assessment, the Board of Trustees shall consider among others the properties identified in the following: (i) Virginia Outdoors Plan, (ii) Virginia Natural Heritage Plan, (iii) Virginia Institute of Marine Science Inventory, (iv) Virginia Joint Venture Board of the North American Waterfowl Management Plan, and (v) Virginia Board of Historic Resources Inventory. In addition, the Board shall consider any information submitted by the Department of Agriculture and Consumer Services on farmland preservation priorities and any information submitted by the Department of Forestry on forest land initiatives and inventories; and

d. Maintain the inventory and needs assessment on an annual basis.

2. To expend directly or allocate the funds received by the Foundation to the appropriate state agencies for the purpose of acquiring those properties or property interests selected by the Board of Trustees. In the case of restricted funds the Board's powers shall be limited by the provisions of § 10.1-1022.

3. To enter into contracts and agreements, as approved by the Attorney General, to accomplish the purposes of the Foundation.

4. To receive and expend gifts, grants and donations from whatever source to further the purposes set forth in subsection B of § 10.1-1020.

5. To sell, exchange or otherwise dispose of or invest as it deems proper the moneys, securities, or other real or personal property or any interest therein given or bequeathed to it, unless such action is restricted by the terms of a gift or bequest. However, the provisions of § 10.1-1704 shall apply to any diversion from open-space use of any land given or bequeathed to the Foundation.

6. To conduct fund-raising events as deemed appropriate by the Board of Trustees.

7. To do any and all lawful acts necessary or appropriate to carry out the purposes for which the Foundation and Fund are established.

1992, c. 426; 1999, cc. 900, 906; 2000, c. 1053; 2005, c. 633.

§ 10.1-1021.1. Geographic distribution of land protected.

The Foundation shall seek to achieve a fair distribution of land protected throughout the Commonwealth, based upon the following:

1. The importance of conserving land in all regions of the Commonwealth;

2. The importance of protecting specific properties that can benefit all Virginia citizens; and

3. The importance of addressing the particular land conservation needs of areas of the state where Fund moneys are generated.

2000, c. 1053.

§ 10.1-1021.2. Additional powers of the Foundation; requests for conservation easement dispute mediation.

Any private owner of the fee interest in land that is subject to a perpetual conservation easement pursuant to Chapter 10.1 (§ 10.1-1009 et seq.), any holder of such an easement, or any holder of a third-party right of enforcement of such an easement may submit a request, pursuant to guidelines adopted by the Foundation, that the Foundation utilize the process set forth in the Administrative Dispute Resolution Act, Chapter 41.1 (§ 2.2-4115 et seq.) of Title 2.2, to resolve a dispute that is not part of a dispute already in litigation and arises out of or relates to the interpretation or administration of a conservation easement made or entered into pursuant to Chapter 10.1 (§ 10.1-1009 et seq.).

2015, c. 44.

§ 10.1-1022. Expenditure of restricted funds.

The Foundation shall expend restricted funds only in accordance with the applicable restrictions, or allocate such funds to the designated or otherwise appropriate state agency subject to such restrictions. The state agency receiving restricted funds shall expend such funds only in accordance with the applicable restrictions. The Board of Trustees may make such recommendations as are appropriate to the agencies responsible for spending any restricted funds, and the agencies shall consider such recommendations prior to the expenditure of restricted funds received from the Foundation. State agencies and departments receiving funds directly for expenditure for a purpose for which the Foundation is created shall solicit and consider the advice of the Board with respect to the expenditure of such funds prior thereto. This section shall not affect the authority of the Foundation to exercise its discretion with regard to the expenditure or allocation of unrestricted funds received by the Foundation.

1992, c. 426.

§ 10.1-1022.1. Expenditure of funds for natural area protection.

A. No matching grant shall be made from the Fund to any holder or public body for purchasing an interest in land for the protection of a natural area unless:

1. The holder or public body has demonstrated the necessary commitment and financial capability to manage the property; and

2. The Department has, after reviewing the grant application as provided in subsection B, recommended that the grant be made.

B. Natural area grant applications shall be submitted to the Foundation, which shall forward the application to the Department. The application shall include a budget for the proposed purchase and for the management of the property. The Department shall consider the following in making its recommendation on whether the grant should be made:

1. Whether the project will make a significant contribution to the protection of habitats for rare, threatened, or endangered plant or animal species, rare or state-significant natural communities, other ecological resources, or natural areas of Virginia;

2. Whether the area addresses a protection need identified in the Virginia Natural Heritage Plan;

3. The rarity of the elements targeted for conservation;

4. The size and viability of the site; and

5. Whether the holder or public body has the capability to protect the site from short-term and long-term stresses to the area.

C. Matching grant funds provided pursuant to this section shall be expended by the holder or public body within two years of receiving the funds, except that the Department may grant an extension of up to one year.

D. All property for which a matching grant is made pursuant to this section shall be dedicated as a natural area preserve as provided in § 10.1-213. Any such preserve that was purchased in fee simple by the holder or public body shall be open for public access for a reasonable amount of time each year, except as is necessary to protect sensitive resources or for management purposes, as determined by the holder or public body pursuant to an agreement with the Department.

1999, cc. 900, 906; 2001, cc. 164, 168.

§ 10.1-1023. Certain expenditures prohibited.

Moneys from the Fund shall not be expended for the acquisition of any property interest through eminent domain.

1992, c. 426.

§ 10.1-1024. Gifts and bequests to Foundation.

Gifts, devises and bequests of money, securities and other assets accepted by the Foundation, whether personal or real property, shall be deemed to be gifts to the Commonwealth, which shall be exempt from all state and local taxes and shall be regarded as property of the Commonwealth for the purposes of all tax laws.

1992, c. 426; 2000, c. 1053.

§ 10.1-1025. Forms of accounts and records; audit of same.

The accounts and records of the Foundation showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes, provided that such accounts shall correspond as nearly as possible to the accounts and records for such

matters maintained by similar enterprises. The accounts and records of the Foundation shall be subject to audit by the Auditor of Public Accounts or his legal representative as determined necessary by the Auditor of Public Accounts, and the costs of such audit services shall be borne by the Foundation. The Foundation's fiscal year shall be the same as the Commonwealth's.

1992, c. 426; 2018, cc. 57, 307.

§ 10.1-1026. Cooperation of state agencies.

All state officers, agencies, commissions, boards, departments, institutions and foundations shall cooperate with and assist the Foundation in carrying out its purpose and, to that end, may accept any gift or conveyance of real property or interest therein or other property in the name of the Commonwealth from the Foundation. Such property shall be held in possession or used as provided in the terms of the trust, contract or instrumentality by which it was conveyed.

2000, c. 1053.

Chapter 10.3 - WILD SPANISH MUSTANGS FUND

§ 10.1-1027. Wild Spanish Mustangs Fund established; administration; purpose.

There is hereby established in the state treasury a special nonreverting fund to be known as the Wild Spanish Mustangs Fund, hereafter referred to as the Fund. The Fund shall consist of such moneys as may be appropriated by the General Assembly and such other moneys as may be made available from any other 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 administered by the Department of Conservation and Recreation. Any expenditure from the Fund shall be subject to the recommendations of the Park Manager at False Cape State Park, with advice and consultation from the City of Virginia Beach, local legislators, and interested community members. The Fund shall be used for the general purpose of protecting the herd of wild Spanish mustangs on the barrier islands of Virginia. Allocations may include, but are not limited to, the erection and maintenance of fences to restrict the entrance of wild horses into Virginia, the transporting of any wild horses that do reach Virginia back to North Carolina, and other measures to protect these horses and promote their retention in North Carolina, as determined by the Department of Conservation and Recreation.

2007, c. 37.

Subtitle II - ACTIVITIES ADMINISTERED BY OTHER ENTITIES

Chapter 11 - FOREST RESOURCES AND THE DEPARTMENT OF FORESTRY

Article 1 - DEPARTMENT OF FORESTRY

§ 10.1-1100. Department of Forestry; appointment of the State Forester.

The Department of Forestry, hereinafter referred to in this chapter as the Department, is continued as an agency under the supervision of the Secretary of Agriculture and Forestry. The Department shall be headed by the State Forester, who shall be appointed by the Governor to serve at his pleasure for a term coincident with his own.

Any vacancy in the office of the State Forester shall be filled by appointment by the Governor pursuant to the provisions of Article V, Section 10 of the Constitution of Virginia.

The State Forester shall be a technically trained forester and shall have both a practical and theoretical knowledge of forestry.

1986, c. 567, § 10-31.1; 1988, c. 891; 1993, c. 699.

§ 10.1-1100.1. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this chapter the State Forester or the Department 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 State Forester or the Department may be sent by regular mail.

2011, c. 566.

§ 10.1-1101. General powers of Department.

The Department shall have the following general powers, all of which, with the approval of the State Forester, may be exercised by a unit of the Department with respect to matters assigned to that organizational entity:

1. Employ personnel required to carry out the purposes of this chapter;

2. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to contracts with private nonprofit organizations, the United States, other state agencies and governmental subdivisions of the Commonwealth;

3. Accept bequests and gifts of real and personal property as well as endowments, funds, and grants from the United States government and any other source. To these ends, the Department shall have the power to comply with conditions and execute agreements as necessary, convenient or desirable;

4. Promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter;

5. Receive, hold in trust and administer any donation made to it for the advancement of forest resources of the Commonwealth;

6. Undertake evaluation and testing of products and technologies relating to replacement of petroleum-based lubricants and hydraulic fluids with lubricants and hydraulic fluids made or derived from vegetables or vegetable oil, and promote the use of such products and technologies found to be beneficial in preserving and enhancing environmental quality; and

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

1986, c. 567, § 10-31.2; 1988, c. 891; 1995, c. 111.

§ 10.1-1102. Board of Forestry.

The Board of Forestry within the Department of Forestry, referred to in this chapter as the Board, shall be composed of 13 members appointed by the Governor. At least two members shall be representatives of the pine pulpwood industry; two members shall be representatives of the pine lumber industry; two members shall be representatives of the hardwood lumber industry; one member shall be a representative of the timber harvesting industry; and two members shall be small forest landowners. In making appointments to the Board, the Governor shall take into account the geographic diversity of board membership as it relates to Virginia's forest resources. Beginning July 1, 2012, the Governor's appointments shall be staggered as follows: four members for a term of one year, three members for a term of two years, three members for a term of three years, and three members for a term of four years. After the initial staggering of terms, appointments shall be for four-year terms. The State Forester shall serve as executive officer of the Board.

No member of the Board, except the executive officer, shall be eligible for more than two successive terms; however, persons subsequently appointed to fill vacancies may serve two additional successive terms after the terms of the vacancies they were appointed to fill have expired. All vacancies in the membership of the Board shall be filled by the Governor for the unexpired term.

The Board shall meet at least three times a year for the transaction of business. Special meetings may be held at any time upon the call of the executive officer of the Board, or a majority of the members of the Board.

Members of the Board shall be reimbursed for all reasonable and necessary expenses incurred as a result of their membership on the Board.

Code 1950, § 10-84; 1986, c. 539; 1986, c. 567, § 10-84.1; 1988, c. 891; 1990, c. 127; 1992, c. 145; 2011, cc. 691, 714; 2012, cc. 803, 835.

§ 10.1-1103. Powers of the Board.

A. The Board shall be charged with matters relating to the management of forest resources in the Commonwealth.

B. The Board shall advise the Governor and the Department on the state of forest resources within the Commonwealth and the management of forest resources. The Board shall encourage persons, agencies, organizations and industries to implement development programs for forest resource management and counsel them in such development. In addition, the Board shall recommend plans for improving the state system of forest protection, management and replacement, and shall prepare an annual report on the progress and conditions of state forest work.

C. The Board shall formulate recommendations to the State Forester concerning regulations and other matters applicable to Article 10 (§ 10.1-1170 et seq.), including types of equipment to be purchased, rental rates for equipment, and reforestation practices.

1986, c. 567, § 10-84.2; 1988, c. 891; 2012, cc. 803, 835.

Article 2 - DUTIES OF THE STATE FORESTER AND GENERAL PROVISIONS

§ 10.1-1104. General powers and duties of State Forester.

The State Forester, under the direction and control of the Governor, shall exercise the powers and perform the duties conferred or imposed upon him by law and shall perform other duties required of him by the Governor or the appropriate citizen boards.

1986, c. 567, § 10-31.3; 1988, c. 891.

§ 10.1-1105. Additional powers and duties of State Forester.

A. The State Forester shall supervise and direct all forest interests and all matters pertaining to forestry within the Commonwealth. He shall have charge of all forest wardens and shall appoint, direct and supervise persons he employs to perform labor in the forest reservations or the nurseries provided for herein, and he is authorized to employ temporary forest wardens to extinguish forest fires in the Commonwealth. He shall take such action as is authorized by law to prevent and extinguish forest fires; develop a program to promote the use of prescribed burning for community protection and ecological, silvicultural, and wildlife management; enforce all laws pertaining to forest and woodlands; prosecute any violation of such laws; develop silvicultural best management practices, including reforestation, prevention of erosion and sedimentation, and maintenance of buffers for water quality, pursuant to Article 12 (§ 10.1-1181.1 et seq.); collect information relative to forest destruction and conditions; direct the protection and improvement of all forest reservations; and, as far as his duties as State Forester will permit, conduct an educational course on forestry at the University of Virginia for credit toward a degree, at farmers' institutes and at similar meetings within the Commonwealth. He shall provide for the protection of state waters from pollution by sediment deposition resulting from silvicultural activities as provided in Article 12 (§ 10.1-1181.1 et seq.). In addition, the State Forester shall cooperate with counties, municipalities, corporations and individuals in preparing plans and providing technical assistance, based on generally accepted scientific forestry principles, for the protection, management and replacement of trees, wood lots and timber tracts and the establishment and preservation of urban forests, under an agreement that the parties obtaining such assistance shall pay the field and traveling expenses of the person employed in preparing such plans. The State Forester also shall assist landowners and law-enforcement agencies with regard to reported cases of timber theft.

B. Records of the Department composed of confidential commercial or financial information supplied by individuals or business entities to the Department in the course of an investigation of timber theft are excluded from the mandatory disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

1986, c. 567, § 10-31.4; 1988, c. 891; 1989, c. 215; 1993, c. 948; 1997, c. 7; 1998, c. 156; 1999, c. 220; 2000, c. 997; 2019, cc. 348, 353.

§ 10.1-1105.1. Century forest program.

The State Forester shall establish and administer a century forest program to honor families in the Commonwealth whose property has been in the same family for 100 years or more and includes at least 20 contiguous acres of managed forest. In order to be eligible for recognition under the program, a property shall (i) have been owned by the same family for at least 100 consecutive years; (ii) be lived on, or actually managed by, a descendant of the original owners; and (iii) have a documented history of timber harvests or forest management activities.

2016, c. 6.

§ 10.1-1106. State Forester to control forest reserves and funds; reforesting; preservation of timber, etc.

The care, management and preservation of the forest reserves of the Commonwealth and the forests thereon, and all moneys appropriated in that behalf, or collected therefrom in any way, and all personal and real property acquired to carry out the objects of this chapter, shall be subject to the control of the State Forester.

The State Forester shall observe, ascertain, follow and put into effect the best methods of reforesting cutover and denuded lands, foresting wastelands, preventing the destruction of forests by fire, the administering of forests on forestry principles, the instruction and encouragement of private owners in preserving and growing timber for commercial and manufacturing purposes, and the general conservation of forest tracts around the headwaters and on the watersheds of the watercourses of the Commonwealth.

Code 1950, § 10-32; 1984, c. 750; 1986, c. 567; 1988, c. 891.

§ 10.1-1107. Purchase of lands and acceptance of gifts for forestry purposes by the State Forester; management; definition of state forests.

A. The State Forester shall have authority to purchase in the name of the Commonwealth lands suitable for state forests. He may accept for state forest purposes gifts, devises and bequests of real and personal property as well as endowments, funds, and grants from any source. Unless otherwise restricted by the terms of the gift, devise or bequest, the State Forester is authorized, in the name of the Commonwealth, to convey or lease any such real property given to it, with the consent and approval of the Governor and the General Assembly and the approval of the instrument as to form by the Attorney General. Mineral and mining rights over and under land donated may be reserved by the donors.

B. The State Forester shall have the power and authority to accept gifts, donations and contributions of land, and to enter into agreements for the acquisition by purchase, lease or otherwise with, the United States, or any agency or agent thereof, of lands for state forests.

C. The State Forester shall have authority to provide for the management, development and utilization of any lands purchased, leased or otherwise acquired, to sell or otherwise dispose of products on or

derived from the land, and to enforce regulations governing state forests, the care and maintenance thereof, and the prevention of trespassing thereon, and such other regulations deemed necessary to carry out the provisions of this section. Approval by the Governor or General Assembly shall not be required for the sale or harvesting of timber on state forest lands or other lands over which the Department has supervision and control.

D. In exercising the powers conferred by this section, the State Forester shall not obligate the Commonwealth for any expenditure in excess of any funds either donated or appropriated to the Department for such purpose.

E. One-fourth of the gross proceeds derived from timber sales on any state forest lands so acquired by the State Forester shall be paid annually by the State Forester to the counties in which such lands are respectively located, and shall become a part of the general funds of such counties, except for Appomattox, Buckingham and Cumberland Counties. For the Counties of Appomattox, Buckingham and Cumberland, one-eighth of the gross proceeds derived from timber sales on any state forest lands acquired in these counties shall become part of the general funds of these counties and one-eighth shall be expended annually by the Department, upon consultation with each county, for the enhancement of recreational opportunities on those state forest lands located in the county. This subsection shall not apply to properties acquired or managed for nonstate forest purposes.

F. As used in this chapter unless the context requires a different meaning, "state forest" means lands acquired for the Commonwealth by purchase, gift or lease pursuant to this section. These lands shall be managed and protected for scientific, recreational and educational purposes. Uses of the state forests shall include, but not be limited to, research, demonstrations, tours, soil and water management and protection, hunting, fishing and other recreational activities.

G. All acquisitions of real property under this section shall be subject to the provisions of § 2.2-1149. The Attorney General shall approve the form of the instruments prior to execution.

Code 1950, § 10-33; 1984, c. 750; 1986, c. 567; 1988, c. 891; 1999, c. 201; 2007, c. 689; 2009, c. 43; 2012, cc. 197, 248.

§ 10.1-1108. Waste and unappropriated lands.

Any waste and unappropriated land, other than ungranted shores of the sea, marsh or meadowlands exempted from grant by the provisions of § 41.1-3, may be set apart permanently for use as state forest land, by a grant and proclamation signed by the Governor upon the receipt from the State Forester of an application requesting that a certain piece, tract or parcel of waste and unappropriated land be so set apart. The State Forester shall submit with the application a copy of a report describing fully the location of the land, its character and suitability for forestry purposes together with a complete metes and bounds description of the boundary of the tract. The Department of General Services shall review the application and recommend either approval or disapproval of the transaction to the Governor. If the Governor determines that the land is more valuable for forestry purposes than for agricultural or any other purposes, he may authorize the preparation of a grant which shall be reviewed for legal

sufficiency by the Attorney General for the Governor's signature and the lesser seal of the Commonwealth.

All lands so granted shall be subject to statutes and regulations relating to the regulation, management, protection and administration of state forests.

Code 1950, § 10-34.2; 1950, p. 225; 1984, c. 750; 1986, c. 567; 1988, c. 891; 1995, c. 850.

§ 10.1-1109. State forests not subject to warrant, survey or patent.
Lands acquired by the Commonwealth for forestry purposes shall not be subject to warrant, survey or patent.

Code 1950, § 10-42; 1988, c. 891.

§ 10.1-1110. Violation of regulations for supervision of state forests, etc.
Violators of any regulation for the supervision or use of any state forest, park, road, street or highway traversing the same, shall be guilty of a Class 4 misdemeanor.

Code 1950, § 10-43; 1988, c. 891.

§ 10.1-1111. Kindling fires on state forests; cutting and removing timber; damaging land or timber.
Any person who kindles fire upon any of the state forests of this Commonwealth, except in accordance with regulations prescribed by the State Forester, or who cuts and removes any timber, or who damages or causes the damage of forestland or timber belonging to the Commonwealth, shall be guilty of a Class 3 misdemeanor for each offense committed.

Code 1950, § 10-44; 1986, c. 539; 1988, c. 891.

§ 10.1-1112. Notices relating to forest fires and trespasses.
The State Forester shall distribute notices, printed in large letters on cloth or other suitable material, calling attention to the danger of forest fires, to the forest fire laws, and to trespass laws and their penalties, to forest wardens, and to owners of timberland to be posted by them in conspicuous places. Any person other than a forest warden or the owner of the land on which notices are posted, who tears down, mutilates or defaces any such notice shall be guilty of a Class 4 misdemeanor.

1986, c. 567, § 10-31.5; 1988, c. 891.

§ 10.1-1113. Not liable for trespass in performance of duties.
No action for trespass shall lie against the State Forester, or any agent or employee of the State Forester for lawful acts done in performance of his duties.

1986, c. 567, § 10-31.7; 1988, c. 891.

§ 10.1-1114. Establishment of nurseries; distribution of seeds and seedlings.
A. The State Forester may establish and maintain a nursery or nurseries, for the propagation of forest tree seedlings, either upon one or more of the forest reservations of the Commonwealth, or upon such other land as he may and which he is empowered to acquire for that purpose. Seedlings from this nursery may be furnished to the Commonwealth without expense for use upon its state forests or other

public grounds or parks. Seeds and seedlings may also be distributed to private individuals pursuant to terms and conditions and at prices approved by the State Forester.

B. To the extent permitted by federal law and regulations, the preferred method of treatment shall be fumigation using methyl bromide in seedling plant beds prior to seeding.

C. The Commissioner of Agriculture and Consumer Services or his designee may issue an inspection certificate for intrastate and interstate shipments of conifer and hardwood seedlings to certify that they are apparently free of pests and diseases.

Code 1950, § 10-36; 1968, c. 40; 1986, c. 567; 1988, c. 891; 2012, cc. 101, 621; 2013, c. 124.

§ 10.1-1115. Sale of trees.

For the purpose of maintaining in perpetuity the production of forest products on state forests, the State Forester may designate and appraise the trees which should be cut under the principles of scientific forest management, and may sell these trees for not less than the appraised value. When the appraised value of the trees to be sold is more than $50,000, the State Forester, before making such sale, shall receive bids therefor, after notice by publication once a week for two weeks in two newspapers of general circulation. The State Forester shall have the right to reject any and all bids and to readvertise for bids. The proceeds arising from the sale of the timber and trees so sold, except as provided in subsection E of § 10.1-1107, shall be paid into the state treasury as provided in § 10.1-1116, and shall be held in the Reforestation Operations Fund for the improvement or protection of state forests or for the purchase of additional lands.

Code 1950, § 10-37; 1970, c. 31; 1986, cc. 539, 567; 1988, c. 891; 2008, c. 19.

§ 10.1-1116. Reforestation Operations Fund.

All money obtained from the state forests, except as provided in subsection E of § 10.1-1107, shall be paid into a special nonreverting fund in the state treasury, to the credit of the Reforestation Operations Fund (the Fund). Interest earned on the 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 moneys in the Fund are to be utilized for state forest protection, management, replacement, and extension, under the direction of the State Forester.

Code 1950, § 10-39; 1986, c. 567; 1988, c. 891; 2014, c. 263.

§ 10.1-1117. Specialized services or rentals of equipment to landowners, localities and state agencies; fees; disposition of proceeds.

The State Forester may cooperate with landowners, counties, municipalities and state agencies, by making available forestry services consisting of specialized or technical forestry equipment and an operator, or rent to them such specialized equipment. For such services or rentals, a reasonable fee, representing the State Forester's estimate of the cost of such services or rentals, shall be charged.

All moneys paid to the State Forester for such services or rentals shall be deposited in the state treasury to the credit of the Forestry Operations Fund, to be used in the further protection and development of the forest resources of this Commonwealth. Upon presentation of a statement, the landowner, county, municipality or state agency receiving such services or rentals shall pay to the State Forester, within thirty days, the amount of charge shown on the statement.

1964, c. 513, § 10-54.1; 1986, c. 567; 1988, c. 891.

§ 10.1-1118. Account of receipts and expenditures.

The State Forester shall keep a full and accurate account of the receipts and expenditures of the Department.

Code 1950, § 10-40; 1986, c. 567; 1988, c. 891; 2004, c. 58.

§ 10.1-1119. Preservation of evidence as to conserving forest supply; reports to General Assembly; publications.

The State Forester shall preserve all evidence taken by him with reference to conserving the forests of the Commonwealth and the methods best adapted to accomplish such object. He shall report his actions, conclusions and recommendations to each session of the General Assembly and from time to time publish for public distribution, in bulletin or other form, such conclusions and recommendations as may be of immediate public interest.

Code 1950, § 10-41; 1984, c. 750; 1986, c. 567; 1988, c. 891.

§ 10.1-1119.1. State Forests System Fund established.

There is hereby created in the state treasury a special nonreverting fund to be known as the State Forests System Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. All contributions from income tax refunds and any other source 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 developing and implementing conservation and education initiatives in the state forests system. 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 State Forester.

1999, c. 998.

Article 3 - FOREST MANAGEMENT OF STATE-OWNED LANDS FUND

§ 10.1-1120. Forest Management of State-Owned Lands Fund.

The Forest Management of State-Owned Lands Fund established by the legislature in 1980 is continued.

1980, c. 525, § 10-45.1; 1988, c. 891.

§ 10.1-1121. Definitions.

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

"Fund" means the Forest Management of State-Owned Lands Fund.

"State-owned lands" means forest land owned or managed by the various departments, agencies and institutions of the Commonwealth and designated by the Department in cooperation with the Division of Engineering and Buildings of the Department of General Services as being of sufficient size and value to benefit from a forest management plan. State-owned land shall not include properties held or managed by the Department of Wildlife Resources, the Department of Forestry, or the Department of Conservation and Recreation.

1980, c. 525, § 10-45.2; 1981, c. 219; 1984, c. 750; 1986, c. 567; 1988, c. 891; 1989, c. 656; 2020, c. 958.

§ 10.1-1122. Management, harvesting, sale of timber on state-owned land.

A. The Department in cooperation with the Division of Engineering and Buildings shall develop a forest management plan for state-owned lands with the assistance of affected state agencies, departments and institutions.

B. Prior to the sale of timber from state-owned lands, the proposed sale shall be first approved by the Department and by the Division of Engineering and Buildings. The Department shall make or arrange for all sales so approved and shall deposit all proceeds to the credit of the Fund, except that when sales are made from timber on land held by special fund agencies or the Department of Military Affairs, or from timber on land that is gift property specified in subsection J of § 2.2-1156, the Department shall deposit in the Fund only so much of the proceeds as are needed to defray the cost of the sale and to implement the forestry management plan on that particular tract of land. The remainder of the proceeds from such a sale shall then be paid over to the special fund agency concerned, the Department of Military Affairs, or the agency or institution holding the gift properties, to be used for the purposes of that agency, department, or institution.

1980, c. 525, § 10-45.3; 1981, c. 219; 1986, c. 567; 1988, c. 891; 2009, c. 612; 2019, cc. 659, 660.

§ 10.1-1123. Use of Fund; management, receipt and expenditure of moneys.

The Fund shall be used to defray the costs of timber sales, to develop forest management plans for state-owned lands pursuant to § 10.1-1124, and to implement those plans. The Department shall have the authority to manage, receive and expend moneys for and from the Fund for these purposes.

1980, c. 525, § 10-45.4; 1981, c. 219; 1986, c. 567; 1988, c. 891.

Article 4 - FOREST PROTECTION FOR CITIES AND COUNTIES

§ 10.1-1124. Counties and certain cities to pay annual sums for forest protection, etc.

A. Upon presentation to its governing body of an itemized statement duly certified by the State Forester, each county in this Commonwealth, or city which enters into a contract with the State Forester under § 10.1-1125 to provide forest fire prevention, shall repay into the state treasury annually any amounts expended in the preceding year by the State Forester in such county or city for forest

protection, forest fire detection, forest fire prevention and forest fire suppression, not to exceed in any one year an amount measured by the acreage, computed, beginning July 1, 2008, upon the basis of seven cents per acre of privately owned forests in the county or city and beginning July 1, 2009, nine cents per acre, according to the most recent United States Forest Survey. In any additions or deductions of acreage from that given by this survey, any land, other than commercial orchards, sustaining as its principal cover a growth of trees or woody shrubs shall be considered forest land, irrespective of the merchantability of the growth, and cutover land shall be considered as forest land unless it has been cleared or improved for other use. Open land shall be considered as forest land when it bears at least 80 well-distributed seedlings or sprouts of woody species per acre. The amounts so repaid by the counties or cities into the state treasury shall be credited to the Forestry Operations Fund for forest protection, forest fire detection, forest fire prevention and forest fire suppression in the Commonwealth and, with such other funds as may be appropriated by the General Assembly or contributed by the United States or any governmental or private agency for these purposes, shall be used and disbursed by the State Forester for such purposes. In cities this subsection shall be subject to § 10.1-1125.

B. In any case in which the State Forester and the governing body of any county or city cannot agree upon the additions or deductions to privately owned forest acreage in a particular county or city, or to changes in forest acreage from year to year, the question shall be submitted to the judge of the circuit court of the county or city by a summary proceeding, and the decision of the judge certified to the governing body and to the State Forester, respectively, shall be conclusive and final.

Code 1950, § 10-46; 1964, c. 79; 1984, c. 715; 1986, c. 567; 1988, c. 891; 2008, c. 254.

§ 10.1-1125. Application of Articles 4, 5 and 6 to cities; State Forester authorized to enter into contracts with cities.

A. In addition to the application of this article and Articles 5 (§ 10.1-1131 et seq.) and 6 (§ 10.1-1134.1 et seq.) to forestlands lying in counties, such articles shall also apply to forestlands lying within cities. For the purposes of such articles as applied to cities, forest land shall be considered as comprising land which bears at least eighty well-distributed seedlings or sprouts of woody species per acre and which is specifically included in the provisions of the contract with the city.

B. The State Forester is authorized to enter into contracts prepared by the Attorney General with the governing body of any city in which any such forestland is located. The contract shall include provisions for the State Forester to furnish forest fire protection, prevention, detection, and suppression services and to enforce state law applicable to forest fires on forestlands upon any such lands located within a city. The services so provided by the State Forester shall be of the same general type, character, and standard as the same services provided in counties generally.

1964, c. 79, § 10-46.1; 1974, c. 216; 1984, c. 750; 1986, cc. 188, 567; 1988, c. 891.

§ 10.1-1126. State Forester authorized to enter into agreements with federal agencies.

The State Forester is authorized to enter into agreements, approved by the Attorney General of Virginia, with agencies of the United States government holding title to forest land in any county, city or

town. Any such agreement may include provisions for the State Forester to furnish forest fire protection, prevention, detection, and suppression services together with enforcement of state law applicable to forest fires on forestlands within such county, city or town. Costs of such services provided by the State Forester shall be reimbursed to him as provided in the agreement. The services provided by the State Forester shall be of the same general type, character, and standard as the same services provided in counties, cities and towns generally.

1974, c. 216, § 10-46.2; 1984, c. 750; 1986, cc. 188, 567; 1988, c. 891.

§ 10.1-1126.1. Silvicultural practices; local government authority limited.

A. Forestry, when practiced in accordance with accepted silvicultural best management practices as determined by the State Forester pursuant to § 10.1-1105, constitutes a beneficial and desirable use of the Commonwealth's forest resources.

B. Notwithstanding any other provision of law, silvicultural activity, as defined in § 10.1-1181.1, that (i) is conducted in accordance with the silvicultural best management practices developed and enforced by the State Forester pursuant to § 10.1-1105 and (ii) is located on property defined as real estate devoted to forest use under § 58.1-3230 or in a district established pursuant to Chapter 43 (§ 15.2-4300 et seq.) or Chapter 44 (§ 15.2-4400 et seq.) of Title 15.2, shall not be prohibited or unreasonably limited by a local government's use of its police, planning and zoning powers. Local ordinances and regulations shall not require a permit or impose a fee for such silvicultural activity. Local ordinances and regulations pertaining to such silvicultural activity shall be reasonable and necessary to protect the health, safety and welfare of citizens residing in the locality, and shall not be in conflict with the purposes of promoting the growth, continuation and beneficial use of the Commonwealth's privately owned forest resources. Prior to the adoption of any ordinance or regulation pertaining to silvicultural activity, a locality may consult with, and request a determination from, the State Forester as to whether the ordinance or regulation conflicts with the purposes of this section. Nothing in this section shall preclude a locality from requiring a review by the zoning administrator, which shall not exceed ten working days, to determine whether a proposed silvicultural activity complies with applicable local zoning requirements.

C. The provisions of this section shall apply to the harvesting of timber, provided that the area on which such harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163.

The provisions of this section shall not apply to land that has been rezoned or converted at the request of the owner or previous owner from an agricultural or rural to a residential, commercial or industrial zone or use.

Nothing in this section shall affect any requirement imposed pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.) or imposed by a locality pursuant to the designation of a scenic highway or Virginia byway in accordance with §§ 33.2-405 through 33.2-408.

1997, c. 7.

§ 10.1-1127. County and city levies and appropriations.

The governing bodies of the counties and those cities entering into a contract as provided in § 10.1-1125 are authorized to levy taxes and appropriate money for forest protection, improvement and management.

Code 1950, § 10-47; 1964, c. 79; 1988, c. 891.

§ 10.1-1127.1. Tree conservation ordinance; civil penalties.

A. The governing body of any county, city or town may adopt a tree conservation ordinance regulating the preservation and removal of heritage, specimen, memorial and street trees, as defined under subsection B of this section, when such preservation and removal are not commercial silvicultural or horticultural activities, including but not limited to planting, managing, or harvesting forest or tree crops. Such ordinance shall consider planned land use by the property owner, may include reasonable fees for the administration and enforcement of the ordinance and may provide for the appointment by the local governing body of an administrator of the ordinance.

B. Any ordinance enacted pursuant to this authority may contain reasonable provisions for the preservation and removal of heritage, specimen, memorial and street trees. For the purpose of this section the following definitions shall apply:

"Arborist" or "urban forester" means a person trained in arboriculture, forestry, landscape architecture, horticulture, or related fields and experienced in the conservation and preservation of native and ornamental trees.

"Heritage tree" means any tree that has been individually designated by the local governing body to have notable historic or cultural interest.

"Memorial tree" means any tree that has been individually designated by the local governing body to be a special commemorating memorial.

"Specimen tree" means any tree that has been individually designated by the local governing body to be notable by virtue of its outstanding size and quality for its particular species.

"Street tree" means any tree that has been individually designated by the local governing body and which grows in the street right-of-way or on private property as authorized by the owner and placed or planted there by the local government.

The designation of such trees shall be by an arborist or urban forester and shall be made by ordinance. The individual property owner of such trees shall be notified prior to the hearing on the adoption of such ordinance by certified mail.

C. The provisions of a tree conservation ordinance enacted pursuant to this section shall not apply: (i) to work conducted on federal or state property; (ii) to emergency work to protect life, limb or property; (iii) to routine installation, maintenance and repair of cable and wires used to provide cable television, electric, gas or telephone service; (iv) to activities with minor effects on trees, including but not limited

to, home gardening and landscaping of individual homes; and (v) commercial silvicultural or horticultural activities, including but not limited to planting, managing, or harvesting forest or tree crops.

D. In the event that the application of any ordinance regulating the removal of heritage, specimen, memorial or street trees results in any taking of private property for a public purpose or use, the governing body shall compensate by fee or other consideration the property owner for such taking and the ordinance shall so state thereby notifying the owner of his right to seek such fee or other compensation. The provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 shall apply to the taking of private property for a public purpose pursuant to such local ordinance.

E. Violations of such local ordinance shall be punishable by civil penalties not to exceed $2,500 for each violation.

F. Nothing in this section shall be construed to be in derogation of the authority granted to any county, city or town by the provision of any charter or other provision of law.

1989, c. 678; 2003, c. 940.

§ 10.1-1128. Acquisition and administration.

Each county, city and town acting through its governing body, is authorized to acquire by purchase, gift or bequest tracts of land suitable for the growth of trees and to administer the same, as well as any lands now owned by any such locality and suitable for the growth of trees, as county, city or town forests.

Code 1950, § 10-48; 1988, c. 891.

§ 10.1-1129. Purchasing real estate outside of boundaries.

Before any governing body purchases any real estate outside of the county, city or town which it represents pursuant to the provisions of § 10.1-1128, it shall first secure the approval of the governing body of the county, city or town in which the real estate is located.

Code 1950, § 10-49; 1988, c. 891.

§ 10.1-1130. State Forester to furnish seedlings and technical assistance.

The State Forester is authorized to supply from any forest tree nursery or nurseries forest tree seedlings and transplants necessary and suitable for reforesting any part or all of any lands acquired or owned and administered by any county, city or town as provided in § 10.1-1128, and to furnish technical assistance and supervision necessary for the proper management and administration of such lands and forests free of cost to counties, cities and towns. The respective counties, cities and towns shall agree to administer such lands in accordance with the practices and principles of scientific forestry as determined by the State Forester or the Board of Forestry.

Code 1950, § 10-50; 1986, c. 567; 1988, c. 891.

Article 5 - FORESTRY SERVICES FOR LANDOWNERS

§ 10.1-1131. Authority of State Forester.

The State Forester is authorized to designate, upon request of the landowner, forest trees of private forest landowners for sale or removal, by blazing or otherwise, and to measure or estimate the volume of the trees under the terms and conditions hereinafter provided.

Code 1950, § 10-51; 1986, c. 567; 1988, c. 891.

§ 10.1-1132. Administration by State Forester; services rendered.

The State Forester shall administer the provisions of this article. The State Forester, or his authorized agent, upon receipt of a request from a forest landowner for technical forestry assistance or service, may (i) designate forest trees for removal for lumber, veneer, poles, piling, pulpwood, cordwood, ties, or other forest products, by blazing, spotting with paint, or otherwise designating in an approved manner; (ii) measure or estimate the commercial volume contained in the trees designated; (iii) furnish the forest landowner with a statement of the volume of the trees so designated and estimated; and (iv) offer general forestry advice concerning the management of the landowner's forest.

Code 1950, § 10-52; 1986, c. 567; 1988, c. 891.

§ 10.1-1133. Fees for services; free services.

Upon presentation of a statement for designating, measuring or estimating services specified in § 10.1-1132, the landowner or his agent shall pay to the State Forester within thirty days of receipt of the statement an amount not to exceed five percent of the sale price or fair market value of the stumpage so designated, measured or estimated. However, for the purpose of further encouraging the use of approved scientific forestry principles on the private forestlands of this Commonwealth, and to permit explanation of the application of such principles, the State Forester may, where he deems it advisable, designate, measure or estimate without charge the trees of a forest landowner on an area not in excess of ten acres.

Code 1950, § 10-53; 1988, c. 891.

§ 10.1-1134. Disposition of fees.

All moneys paid to the State Forester for services described in this article shall be deposited in the state treasury to the credit of the Forestry Operations Fund, to be used to provide additional similar scientific forestry services to the landowners of this Commonwealth. The State Forester is hereby authorized to utilize any unobligated balances in the fire suppression fund for the purpose of acquiring replacement equipment for forestry management and protection operations.

Code 1950, § 10-54; 1984, c. 715; 1986, c. 567; 1988, c. 891.

Article 6 - FOREST WARDENS AND FIRES

§ 10.1-1134.1. Definitions.

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

"Orchard" means agricultural land located in the Commonwealth consisting of at least one-half acre of contiguous land dedicated to the growing of crops from trees, bushes, or vines, which crops are used or are intended to be used for commercial purposes.

"Vineyard" means agricultural land located in the Commonwealth consisting of at least one-half acre of contiguous land dedicated to the growing of grapes that are used or are intended to be used for commercial purposes.

2018, c. 197.

§ 10.1-1135. Appointment and compensation of forest wardens; oath; powers.

The State Forester, when he deems it necessary, may request the Governor to commission persons designated by the State Forester to act as forest wardens of the Commonwealth, to enforce the forest laws and, under his direction, to aid in carrying out the purposes of this chapter. Such wardens shall receive compensation as may be provided in accordance with law for the purpose. Before entering upon the duties of their office, forest wardens thus appointed shall take the proper official oath before the clerk of the court of the county or city in which they reside. While holding such office forest wardens shall be conservators of the peace. They also shall have the authority to enforce the provisions of § 62.1-194.2.

The State Forester may designate certain forest wardens to be special forest wardens. Special forest wardens shall have the same authority and power as sheriffs throughout the Commonwealth to enforce the forest laws.

Code 1950, § 10-55; 1964, c. 79; 1970, c. 433; 1986, cc. 188, 567; 1988, cc. 196, 891.

§ 10.1-1136. Duties of forest wardens.

The duties of the forest wardens are to (i) enforce all forest and forest fire statutes and regulations of the Commonwealth, (ii) serve as forest fire incident commander and perform other duties as needed in the management and suppression of forest fire incidents as long as the authority granted under this section does not conflict with or diminish the lawful authority, duties, and responsibilities of fire chiefs or other fire service officers in charge, including but not limited to the provisions of Chapter 2 (§ 27-6.1 et seq.) of Title 27, and (iii) protect the forests of the Commonwealth.

Code 1950, § 10-56; 1986, c. 188; 1988, c. 891.

§ 10.1-1137. Duty in case of fires and payment of costs of suppression.

When any forest warden sees or receives a report of a forest fire, he shall proceed immediately to the scene of the fire and employ such persons and means as in his judgment are expedient and necessary to extinguish the fire, within the limits of the expense he has been authorized to incur in his instructions from the State Forester. He shall keep an itemized account of all expenses incurred and immediately send the account verified by affidavit to the State Forester.

Upon approval by the State Forester the account shall be paid from the Forestry Operations Fund.

No such payment shall be made to any person who has maliciously started the fire or to any person whose negligence caused or contributed to the setting of the fire.

Code 1950, § 10-57; 1964, c. 79; 1986, cc. 188, 567; 1988, c. 891.

§ 10.1-1138. Rewards for information leading to conviction of arsonists or incendiaries.

The State Forester shall be authorized, whenever it appears to him that forest fires in any part of the Commonwealth are caused by unknown arsonists or incendiaries, to offer a monetary reward for information sufficient to procure conviction in a court of appropriate jurisdiction of the person or persons responsible for such fire. No law-enforcement officer paid in whole or in part from public funds or employee of the Department shall be eligible to receive such reward.

All such reward money shall be paid from funds appropriated for the protection and development of the forest resources of this Commonwealth, and shall not exceed either $10,000 paid in any one fiscal year or $2,000 paid to any one person for information leading to any one conviction.

1966, c. 8, § 10-57.1; 1986, cc. 188, 567; 1988, c. 891.

§ 10.1-1139. Who may be summoned to aid forest warden.

Any forest warden to whom written instructions have been issued by the State Forester authorizing him to employ persons to assist in suppressing forest fires, shall have the authority to summon as many able-bodied persons between eighteen and fifty years of age as may, in his discretion, be reasonably necessary to assist in extinguishing any forest fire in any county or city of the Commonwealth which is organized for forest fire control under the direction of the State Forester. Any person summoned by a forest warden to fight a forest fire shall be paid at the rate of pay provided in the Department of Forestry wage scale for fire fighting in effect in the county or city, or part thereof, in which the fire is fought. Wardens shall not summon for such service any person while engaged in maintaining the rights-of-way of railroads for the safe passage of trains, nor any station agent, operator or other person while engaged in duties necessary for the safe operation of trains.

Any person summoned who fails or refuses to assist in fighting the fire, unless the failure is due to physical inability or other valid reason, shall be guilty of a Class 4 misdemeanor.

Code 1950, § 10-59; 1964, c. 79; 1973, c. 401; 1986, c. 188; 1988, c. 891.

§ 10.1-1140. Liability of warden for trespass.

No action for trespass shall lie against any forest warden on account of lawful acts done in the legal performance of his duties.

Code 1950, § 10-60; 1988, c. 891.

§ 10.1-1140.1. Defense of forest wardens.

If any commissioned forest warden appointed by the State Forester is brought before any regulatory body, summoned before any grand jury, arrested, indicted or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties, the State Forester may employ special counsel approved by the Attorney General to defend the forest warden. Upon a finding that the forest warden did not violate a law or regulation resulting from the act which was subject of the investigation, the State Forester shall pay the special counsel legal fees and expenses subject to the approval of the Attorney General. The payment shall be made from funds appropriated for the administration of the Department of Forestry.

1992, c. 113.

§ 10.1-1141. Liability and recovery of cost of fighting forest fires by localities and the State Forester.

A. The State Forester in the name of the Commonwealth shall collect the costs of firefighting performed under the direction of a forest warden in accordance with § 10.1-1139 from any person who, negligently or intentionally without using reasonable care and precaution starts a fire or who negligently or intentionally fails to prevent its escape, which fire burns on any forestland, brushland, grassland or wasteland. Such person shall be liable for the full amount of all expenses incurred by the Commonwealth, for fighting or extinguishing such fire. All expenses collected shall be credited to the Forestry Operations Fund. It shall be the duty of the Commonwealth's attorneys to institute and prosecute proper proceedings under this section, at the instance of the State Forester.

B. Any locality may collect the costs of firefighting from any person who intentionally starts a fire and who fails to attempt to prevent its escape, which fire burns on any forestland, brushland, grassland or wasteland. Such person shall be liable for the full amount of all expenses incurred by the locality and any volunteer fire company or volunteer emergency medical services agency to fight or extinguish the fire and the reasonable administrative costs expended to collect such expenses. The locality shall remit any costs recovered on behalf of another entity to such entity.

C. The State Forester or a locality may institute an action and recover from either one or both parents of any minor, living with such parents or either of them, the cost of forest fire suppression suffered by reason of the willful or malicious destruction of, or damage to, public or private property by such minor. No more than $750 may be recovered from such parents or either of them as a result of any forest fire incident or occurrence on which such action is based.

Code 1950, §§ 10-58, 10-61; 1964, c. 79; 1986, c. 188; 1988, c. 891; 2008, c. 835; 2015, cc. 502, 503.

§ 10.1-1142. Regulating the burning of woods, brush, etc.; penalties.

A. It shall be unlawful for any owner or lessee of land to set fire to, or to procure another to set fire to, any woods, brush, logs, leaves, grass, debris, or other inflammable material upon such land unless he previously has taken all reasonable care and precaution, by having cut and piled the same or carefully cleared around the same, to prevent the spread of such fire to lands other than those owned or leased by him. It shall also be unlawful for any employee of any such owner or lessee of land to set fire to or to procure another to set fire to any woods, brush, logs, leaves, grass, debris, or other inflammable material, upon such land unless he has taken similar precautions to prevent the spread of such fire to any other land.

B. Except as provided in subsection C, during the period February 15 through April 30 of each year, even though the precautions required by the foregoing subsection have been taken, it shall be unlawful, in any county or city or portion thereof organized for forest fire control under the direction of the State Forester, for any person to set fire to, or to procure another to set fire to, any brush, leaves, grass, debris or field containing dry grass or other inflammable material capable of spreading fire, located in or within 300 feet of any woodland, brushland, or field containing dry grass or other inflammable material, except between the hours of 4:00 p.m. and 12:00 midnight.

The provisions of this subsection shall not apply to any fires which may be set to prevent damage to orchards or vineyards by frost or freezing temperatures or be set on federal lands.

C. Subsection B shall not apply to any fire set during the period beginning February 15 through April 30 of each year, if:

1. The fire is set for "prescribed burning" that is conducted in accordance with a "prescription" and managed by a "certified prescribed burn manager" as those terms are defined in § 10.1-1150.1;

2. The burn is conducted in accordance with § 10.1-1150.4;

3. The State Forester has, prior to February 1, approved the prescription for the burn; and

4. The burn is being conducted for one of the following purposes: (i) control of exotic and invasive plant species that cannot be accomplished at other times of the year, (ii) wildlife habitat establishment and maintenance that cannot be accomplished at other times of the year or, (iii) management necessary for natural heritage resources.

The State Forester may on the day of any burn planned to be conducted pursuant to this subsection revoke his approval of the prescription for the burn if hazardous fire conditions exist. The State Forester may revoke the certification of any certified prescribed burn manager who violates any provision of this subsection.

D. Any person who builds a fire in the open air, or uses a fire built by another in the open air, within 150 feet of any woodland, brushland or field containing dry grass or other inflammable material, shall totally extinguish the fire before leaving the area and shall not leave the fire unattended.

E. Any person violating any provisions of this section shall be guilty of a Class 3 misdemeanor for each separate offense. If any forest fire originates as a result of the violation by any person of any provision of this section, such person shall, in addition to the above penalty, be liable to the Commonwealth for the full amount of all expenses incurred by the Commonwealth in suppressing such fire. Such amounts shall be recoverable by action brought by the State Forester in the name of the Commonwealth on behalf of the Commonwealth and credited to the Forestry Operations Fund.

Code 1950, §§ 10-62, 10-63; 1964, c. 79; 1986, c. 188; 1988, c. 891; 1996, cc. 74, 1008; 2001, c. 319; 2006, c. 228; 2017, c. 6.

§ 10.1-1143. Throwing inflammable objects from vehicle on highway while in or near certain lands. It shall be unlawful for any person to throw, toss or drop from a vehicle moving or standing on a highway any lighted smoking material, lighted match, lighted material of any nature, or any bomb or device liable to set fire to inflammable material on the ground while in or near any forestland, brushland or field containing inflammable vegetation or trash.

Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor for each separate offense.

1954, c. 35, § 10-64.1; 1986, c. 188; 1988, c. 891.

§ 10.1-1144. Failure to clean premises of certain mills.

Any individual, firm, or corporation responsible for the operation of a saw mill, stave mill, heading mill, or any other mill in, through or near forest or brushland shall clean the premises for at least a distance of fifty yards in all directions from any fires maintained in or about, or in connection with the operation of such mill. The premises shall also be cleaned for a distance of 100 feet in all directions from any sawdust pile, slab pile, or any other inflammable material which accumulates from the operation of such mill, or all matter not essential to the operation of such mill, which is liable to take fire from any sparks emitted from such fires. When any mill is removed or ceases to operate for a period of ten consecutive days, any fire which may be burning in any sawdust pile, slab pile or other debris shall be totally extinguished unless the owner of the land on which such fire is located assumes in writing responsibility for the control of the fire. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a Class 4 misdemeanor. Each day or fraction thereof on which any such mill is operated in violation of the provisions of this section and each day or fraction thereof on which fire is allowed to burn in any sawdust pile, slab pile or other inflammable debris in violation of the provisions of this section, shall be deemed a separate offense.

Whenever it is established that a forest fire originated from a fire maintained in or about any such mill, the individual, firm, or corporation, from whose mill any such fire originated shall immediately become liable for all costs incurred in fighting such fire.

Code 1950, § 10-64; 1986, c. 188; 1988, c. 891.

§ 10.1-1145. Failure to properly maintain logging equipment and railroad locomotives.

Logging equipment and railroad locomotives operated in, through, or near forestland, brushland or fields containing dry grass or other inflammable material shall be equipped with appliances and maintained to prevent, as far as may be possible, the escape of fire and sparks from the smokestacks. Any person failing to comply with these requirements shall be guilty of a Class 4 misdemeanor for each offense committed.

Code 1950, § 10-65; 1986, c. 188; 1988, c. 891.

§ 10.1-1146. Repealed.

Repealed by Acts 1996, c. 104.

§ 10.1-1147. Removal of inflammable material from lands adjoining right-of-way by railroads.

For the purpose of providing increased protection to forest property from fire originating along railroads, any railroad company shall have the right, subject to the provisions of this section, without liability for trespass to enter upon forest or brushlands for a distance of fifty feet from the railroad right-of-way and to clear from such a strip any inflammable material such as leaves, grass, dead trees, slash and brush, but shall not remove any valuable timber growth or other things of value without consent of and recompense to the owner. Not less than fifteen days prior to clearing such land, the railroad company shall give the owner notice of its intention, together with a transcript of this section, by letter deposited in the United States mail to his last known address. If the owner does not file objections to

such clearings with the State Corporation Commission within ten days of the date of such notice he shall be deemed to have given consent. Upon the filing by an owner of such objection showing cause why such clearing should not be done the State Corporation Commission shall review the case and may sustain the objection of the owner or permit the clearing in whole or in part.

The State Corporation Commission may require assistance of the State Forester in furnishing information pertinent to the administration of this section.

The provisions of this section shall not apply to temporary tram roads used for hauling logs and lumber.

Code 1950, § 10-66; 1988, c. 891.

§ 10.1-1148. Fires caused by violation of provisions of article; liability to Commonwealth.
Individuals and corporations causing fires by violation of any provision of this article shall be liable to the Commonwealth for (i) all damages the Commonwealth sustained by such fire or fires, and (ii) the full amount of all expenses incurred by the Commonwealth, in fighting or extinguishing such fire.

Code 1950, § 10-67; 1964, c. 79; 1988, c. 891.

§ 10.1-1149. Southeastern Interstate Forest Fire Protection Compact.
§ 1. The Governor is hereby authorized to execute, on behalf of the Commonwealth of Virginia, a compact with any one or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and West Virginia, which compact shall be in form substantially as follows:

SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT.

ARTICLE I.
The purpose of this compact is to promote effective prevention and control of forest fires in the Southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member states, by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other Regional Forest Fire Protection compacts or agreements, and for more adequate forest protection.

ARTICLE II.
This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, which are contiguous have ratified it and Congress has given consent thereto. Any state not mentioned in this article which is contiguous with any member state may become a party to this compact, subject to approval by the legislature of each of the member states.

ARTICLE III.
In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the

other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member state shall name one member of the Senate and one member of the House of Representatives who shall be designated by that state's commission on interstate cooperation, or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that state; and the Governor of each member state shall appoint two representatives, one of whom shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting states, and each state shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

ARTICLE IV.

Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

ARTICLE V.

Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance, or use of any equipment or supplies in connection therewith; Provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any state.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and subsistence of employees and maintenance of equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this compact the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

ARTICLE VI.

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member state.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between any federal agency and a member state or states.

ARTICLE VII.

The compact administrators may request the United States Forest Service to act as a research and coordinating agency of the Southeastern Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.

ARTICLE VIII.

The provisions of Articles IV and V of this compact which relate to mutual aid in combating,

controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region: Provided, that the legislature of such other state shall have given its assent to such mutual aid provisions of this compact.

ARTICLE IX.

This compact shall continue in force and remain binding on each state ratifying it until the legislature or the Governor of such state, as the laws of such state shall provide, takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

§ 2. When the Governor shall have executed said compact on behalf of the Commonwealth of Virginia and shall have caused a verified copy thereof to have been filed with the Secretary of the Commonwealth, and when said compact also shall have been ratified by one or more of the states named in § 1 of this act, then said compact shall become operative and effective as between this State and such other state or states; and the Governor is hereby authorized and directed to take such action as may be necessary to complete the exchange of official documents between this State and any other state ratifying said compact.

§ 3. Pursuant to the provisions of Article III of said compact, the State Forester, under the general direction of the Secretary of Agriculture and Forestry, shall act as Compact Administrator for the Commonwealth of Virginia of the compact set forth in § 1 of this act.

§ 4. The State Forester, under the general direction of the Secretary of Agriculture and Forestry, as Compact Administrator, shall be vested with all powers provided for in said compact and all powers necessary and incidental to the carrying out of said compact in every particular.

§ 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

§ 6. This act shall become effective the first day of July 1956.

1956, c. 63, § 27-5.2; 1988, c. 891; 2016, c. 566.

§ 10.1-1150. Middle Atlantic Interstate Forest Fire Protection Compact.

§ 1. The Governor is hereby authorized to execute, on behalf of the Commonwealth of Virginia, a compact with any one or more of the states of Delaware, Maryland, New Jersey, Ohio, Pennsylvania and West Virginia which compact shall be in substantially the following form:

MIDDLE ATLANTIC INTERSTATE FOREST FIRE PROTECTION COMPACT

ARTICLE I. The purpose of this compact is to promote effective prevention and control of forest fires in the Middle Atlantic region of the United States by the development of integrated forest fire plans, by

the maintenance of adequate forest fire fighting services by the member states, and by providing for mutual aid in fighting forest fires among the compacting states of the region and with states which are party to other regional forest fire protection compacts or agreements.

ARTICLE II. This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Delaware, Maryland, New Jersey, Ohio, Pennsylvania, Virginia and West Virginia which are contiguous have ratified it and Congress has given consent thereto.

ARTICLE III. In each state, the state forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that state and shall consult with like officials of the other member states and shall implement cooperation between such states in forest fire prevention and control.

The compact administrators of the member states shall organize to coordinate the services of the member states and provide administrative integration in carrying out the purposes of this compact.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member states.

It shall be the duty of each member state to formulate and put in effect a forest fire plan for that state and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

ARTICLE IV. Whenever the state forest fire control agency of a member state requests aid from the state forest fire control agency of any other member state in combating, controlling or preventing forest fires, it shall be the duty of the state forest fire control agency of that state to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

ARTICLE V. Whenever the forces of any member state are rendering outside aid pursuant to the request of another member state under this compact, the employees of such state shall, under the direction of the officers of the state to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the state to which they are rendering aid.

No member state or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance or use of any equipment or supplies in connection therewith.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting state or under the laws of the aiding state or under the laws of a third state on account of or in connection with a request for aid, shall be assumed and borne by the requesting state.

Any member state rendering outside aid pursuant to this compact shall be reimbursed by the member state receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and maintenance of employees and equipment incurred in connection with such request: provided, that

nothing herein contained shall prevent any assisting member state from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such services to the receiving member state without charge or cost.

Each member state shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such state.

For the purposes of this compact, the term "employee" shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding state under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member states.

ARTICLE VI. Nothing in this compact shall be construed to authorize or permit any member state to curtail or diminish its forest fire fighting forces, equipment, services or facilities, and it shall be the duty and responsibility of each member state to maintain adequate forest fire fighting forces and equipment to meet demands for forest fire protection within its borders in the same manner and to the same extent as if this compact were not operative.

Nothing in this compact shall be construed to limit or restrict the powers of any state ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of state laws, rules or regulations intended to aid in such prevention, control and extinguishment in such state.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between the United States Forest Service and a member state or states.

ARTICLE VII. The compact administrators may request the United States Forest Service to act as the primary research and coordinating agency of the Middle Atlantic Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each state, and the United States Forest Service may accept the initial responsibility in preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of the United States Forest Service may attend meetings of the compact administrators.

ARTICLE VIII. The provisions of Articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any state party to this compact and any other state which is party to a regional forest fire protection compact in another region, provided that the legislature of such other state shall have given its assent to such mutual aid provisions of this compact.

ARTICLE IX. This compact shall continue in force and remain binding on each state ratifying it until the legislature or the governor of such state takes action to withdraw therefrom. Such action shall not

be effective until six months after notice thereof has been sent by the chief executive of the state desiring to withdraw to the chief executives of all states then parties to the compact.

§ 2. The right to alter, amend, or repeal this Act is expressly reserved.

1966, c. 6, § 27-5.4; 1988, c. 891; 2016, c. 566.

Article 6.1 - CERTIFIED PRESCRIBED BURNING MANAGER PROGRAM

§ 10.1-1150.1. Definitions.

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

"Certified prescribed burn manager" means any person who has successfully completed a certification process established by the State Forester under § 10.1-1150.2.

"Prescribed burning" means the controlled application of fire or wildland fuels in either the natural or modified state, under specified environmental conditions, which allows a fire to be confined to a predetermined area and produces the fire behavior and fire characteristics necessary to attain planned fire treatment and ecological, silvicultural, and wildlife management objectives.

"Prescription" means a written statement defining the objectives to be attained by a prescribed burning and the conditions of temperature, humidity, wind direction and speed, fuel moisture, and soil moisture under which a fire will be allowed to burn. A prescription is generally expressed as an acceptable range of the prescription elements.

1998, c. 156.

§ 10.1-1150.2. State Forester to establish certification process.

The State Forester shall develop and administer a certification process and training course for any individual who desires to become a certified prescribed burn manager. The training program shall include the following subjects: the legal aspects of prescribed burning, fire behavior, prescribed burning tactics, smoke management, environmental effects, plan preparation, and safety. A final examination on these subjects shall be given to all attendees. The State Forester may charge a reasonable fee to cover the costs of the course and the examination.

1998, c. 156.

§ 10.1-1150.3. Voluntary certification.

To be certified as a prescribed burn manager, a person shall:

1. Successfully complete all components of the prescribed burn course developed by the State Forester and pass the examination developed for the course;

2. Successfully complete a training course comparable to that developed by the State Forester and pass the examination developed for Virginia's course; or

3. Demonstrate relevant past experience, complete a review course and pass the examination developed for Virginia's course.

1998, c. 156.

§ 10.1-1150.4. Prescribed burn elements.

Prescribed burning shall be performed in the following manner:

1. A prescription for the prescribed burn shall be prepared by a certified prescribed burn manager prior to the burn. The prescription shall include: (i) the landowner's name, address, and telephone number, and the telephone number of the certified prescribed burn manager who prepared the plan; (ii) a description of the area to be burned, a map of the area to be burned, the objectives of the prescribed burn, and the desired weather conditions or parameters; (iii) a summary of the methods to be used to start, control, and extinguish the prescribed burn; and (iv) a smoke management plan. The smoke management plan shall be based on guidelines presented in the Virginia Department of Forestry publication, "Voluntary Smoke Management Guidelines for Virginia," and the U.S. Forest Service's technical publication, "A Guide to Prescribed Fire in Southern Forests." A copy of the prescription shall be retained at the site throughout the period of the burning;

2. Prescribed burning shall be conducted under the direct supervision of a certified prescribed burn manager, who shall ensure that the prescribed burning is in accordance with the prescription; and

3. The nearest regional office of the Virginia Department of Forestry shall be notified prior to the burn.

1998, c. 156.

§ 10.1-1150.5. Liability.

A. Any prescribed burning conducted in compliance with the requirements of this article, state air pollution control laws, and any rules adopted by the Virginia Department of Forestry shall be in the public interest and shall not constitute a nuisance.

B. Any landowner or his agent who conducts a prescribed burn in compliance with the requirements of this article, state air pollution control laws, and any rules adopted by the Virginia Department of Forestry shall not be liable for any damage or injury caused by or resulting from smoke.

C. Subsections A and B of this section shall not apply whenever a nuisance or damage results from the negligent or improper conduct of the prescribed burn or when the prescribed burn elements described in § 10.1-1150.4 have not been complied with.

1998, c. 156.

§ 10.1-1150.6. Revocation of certification.

If the actions of any certified prescribed burn manager or the prescriptions prepared by him violate any provision of this article, state air pollution control laws, or Virginia Department of Forestry rules or threaten public health and safety, his certification may be revoked by the State Forester.

1998, c. 156.

Article 7 - HUNTING AND TRAPPING IN STATE FORESTS

§ 10.1-1151. Necessity for permits.

No person shall hunt or trap in this Commonwealth on any lands which are under the jurisdiction and control of the Department by virtue of purchase, gift, lease or otherwise, and are administered as state forests, without first obtaining, in addition to other licenses and permits required by law, special use permits required by the State Forester pursuant to this article.

Code 1950, § 10-68; 1986, c. 567; 1988, c. 891.

§ 10.1-1152. State Forester may require permits and fees.

A. The State Forester is authorized to require any person who engages in certain activities authorized by regulations promulgated by the Department on any of the lands described in § 10.1-1151 to obtain a special use permit. A special use permit to engage in these activities on any such lands shall be issued for a fee established by regulations promulgated by the Department.

B. The State Forester is also authorized to enter into an agreement with the Department of Wildlife Resources under which the Department of Wildlife Resources will include permits required under subsection A in its program for the sale of permits and licenses by the means and to the extent authorized by § 29.1-327.

Code 1950, § 10-69; 1984, c. 715; 1986, cc. 539, 567; 1988, c. 891; 1993, c. 260; 2006, c. 13; 2007, c. 646; 2009, c. 297; 2012, c. 484; 2014, c. 141; 2020, c. 958.

§ 10.1-1153. Limitations on rights of holders of permits.

Each special use permit shall entitle the holder to hunt and trap, or to trap, in and upon such lands of the state forests as shall be determined by the State Forester and designated on the permit, subject to all other applicable provisions of law or regulations of the Department of Wildlife Resources and to such further conditions and restrictions for safeguarding the state forests as may be imposed by the State Forester and indicated on the permit. In addition to the other provisions of law applicable to hunting and trapping on the lands of the Commonwealth, the State Forester is authorized to impose such restrictions and conditions upon hunting and trapping in the state forests as he deems proper. No such restriction or condition shall be effective for the permit holder unless the restriction or condition is written, printed, stamped or otherwise indicated on the permit.

Code 1950, § 10-70; 1986, c. 567; 1988, c. 891; 2020, c. 958.

§§ 10.1-1154, 10.1-1155. Repealed.

Repealed by Acts 2007, c. 646, cl. 2.

§ 10.1-1156. Funds credited to Department; disbursements.

All funds paid into the state treasury pursuant to § 10.1-1152 shall be credited to the Department and maintained in the Reforestation Operations Fund to be expended annually, in the following order:

1. From the annual gross receipts, there shall be paid the costs of preparing and issuing the permits, including compensation to the Department of Wildlife Resources, which is authorized to sell state forest special use permits;

2. The remainder may be expended by the State Forester for operation and management in such state forests. All funds expended by the State Forester in the development, management, and protection of the game resources in state forests shall be in cooperation with the Department of Wildlife Resources.

Code 1950, § 10-73; 1986, c. 567; 1988, c. 891; 2007, c. 646; 2012, cc. 197, 248; 2020, c. 958.

§ 10.1-1157. Punishment for violations.

Any person who hunts or traps in violation of any provision of this article, or in violation of restrictions and conditions imposed by the State Forester pursuant to the provisions of § 10.1-1153 shall be guilty of a Class 3 misdemeanor.

Code 1950, § 10-74; 1986, cc. 539, 567; 1988, c. 891; 2010, c. 8.

Article 8 - FIRE HAZARDS AND CLOSING OF HUNTING AND FISHING SEASONS IN FORESTLANDS

§ 10.1-1158. Prohibition of all open burning where serious fire hazards exist; penalty.

It shall be unlawful when the forestlands, brushlands and fields in this Commonwealth or any part thereof have become so dry as to create a serious fire hazard endangering lives and property, for any persons to do any open burning nearer than 300 feet from any such forestlands, brushlands or fields containing dry grass or other flammable material.

This article shall not be effective until the Governor, upon recommendation of the State Forester, proclaims such a condition to exist in this Commonwealth or any part thereof, and it shall be in effect until the Governor proclaims such condition to have terminated.

It shall be the duty of all authorized law-enforcement officers of the Commonwealth, counties, and municipalities to enforce the provisions of this section.

Any person violating the provisions of this section shall be guilty of a Class 3 misdemeanor for each separate offense.

1986, c. 188, § 27-54.5; 1988, c. 891.

§ 10.1-1159. Upon proclamation of Governor certain acts made unlawful where extraordinary fire hazards exist; closing of hunting and fishing seasons.

Upon proclamation of the Governor, it shall be unlawful, when the forestlands, brushlands and fields in the Commonwealth or any part thereof have become so dry as to create an extraordinary fire hazard endangering lives and property, for any person, except the owner, tenant or owner's authorized agent, persons regularly engaged in cutting, processing, or moving forest products, or person on official duty, to enter or travel in any state, county, municipal or private forestlands, brushlands, marshland, fields or idle or abandoned lands in the area so affected except on public highways or well-defined private roads. During such period hunting and fishing seasons shall be closed, except hunting of migratory waterfowl and fishing as hereinafter provided, on all land and water within the Commonwealth or any geographical part thereof affected by proclamation. It shall further be unlawful during such periods for

any person to hunt or fish except as hereinafter provided, smoke, burn leaves, grass, brush or debris of any type or to ignite or maintain any open fire nearer than 300 feet from any such forestlands, brushlands or fields containing inflammable vegetation or marshland adjoining such forestlands, brushlands, fields or idle or abandoned lands.

It shall not be unlawful to fish or hunt migratory waterfowl from a boat, or from a blind entirely surrounded by water and reached by a boat, or on nonforested islands at least 300 feet from the mainland shore and reached by a boat, when the boat embarks from and lands at established boat landings, and at no other time touches shore nearer than 300 feet from any forestlands, brushlands, or fields containing inflammable vegetation or marshland adjoining such areas.

It shall be the duty of all authorized law-enforcement officers of the Commonwealth, counties and municipalities to enforce the provisions of this section.

Any person violating the provisions of this section shall be guilty of a Class 2 misdemeanor for each separate offense.

1954, c. 134, § 27-54.1; 1964, c. 65; 1966, c. 302; 1986, c. 188; 1988, c. 891.

§ 10.1-1160. Effect of proclamation on hunting season.

When any proclamation is issued pursuant to § 10.1-1158 during any open hunting season (with the exception of any season on migratory birds or waterfowl, the limits of which are prescribed by any agency of the federal government), or when the opening date of any such hunting season occurs while such proclamation is effective, the season, if open, may be extended by the Governor for a period not exceeding the number of legal hunting days during which such proclamation is in effect, beginning on the first legal hunting day after the expiration of the season. If the season is not open, it may open beginning on the first legal hunting day after such proclamation is rescinded and remain open for a period not exceeding the prescribed length of the season.

1954, c. 134, § 27-54.2; 1972, c. 150; 1988, c. 891.

§ 10.1-1161. Notice of issuance, amendment or rescission of proclamation.

When any proclamation is issued, amended or rescinded the Secretary of the Commonwealth shall promptly give notice thereof through a newspaper or newspapers of general circulation in the area or areas affected. In addition, the Secretary may, in his discretion, give such additional notice as he deems necessary.

Code 1950, § 10-75; 1952, c. 417; 1956, c. 75; 1988, c. 891.

Article 9 - SEED TREES

§ 10.1-1162. Definitions.

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

"Diameter" means the distance through a tree at the point of average thickness as measured from outside of bark to outside of bark at a point on a trunk ten inches above the general ground level.

"Person" means any landowner, owner of timber, owner of timber rights, sawmill operator, sawmill owner, veneer wood operator, pulpwood contractor, or any person engaged in the business of severing timber from the stump.

"Tree" means any tree of a currently commercially valuable species which is six inches or more in diameter.

Code 1950, § 10-75; 1952, c. 417; 1956, c. 75; 1988, c. 891.

§ 10.1-1163. Exemptions from article.

A. This article shall not apply to any acre of land on which there are present at the time of final cutting of the timber 400 or more loblolly or white pine seedlings, singly or together, four feet or more in height.

B. This article shall not apply to any person who clears or who procures another to clear his land for bona fide agricultural or improved pasture purposes or for the purpose of subdividing such land for sale for building sites. For the purpose of this article, evidence of intent of bona fide agricultural or improved pasture use shall require, as a minimum and within twelve months from the date of completion of commercial cutting, that the land intended for such use be cleared of all trees, snags, brush, tree tops, and debris by piling and burning or otherwise disposing of same, or by enclosing the area with a well-constructed fence and planting grass seed thereon so as to make a bona fide improved pasture. In the case of clearing for building sites evidence of intent shall be the construction of dwellings or other bona fide structure in progress or completed within two years from the date of completion of commercial cutting.

C. This article shall not apply to land which has been zoned for a more intensive land use than agricultural or forestal use.

D. The provisions of this article shall not apply to any acre or acres of forest land for which a planting, cutting or management plan has been prepared, designed to provide conservation of natural resources, and which plan has been submitted to and approved by the State Forester previous to the cutting of any trees on the acre or acres concerned. If such plan has been submitted to the State Forester by registered or certified mail and he has not approved the plan, or disapproved it with a statement in writing of his reasons therefor, within a period of sixty days from the date of submission, the plan shall be deemed approved and shall be effective for the purposes of this section.

E. The State Forester may grant exemptions from this article to individual landowners who wish to grow hardwoods on their property. The State Forester may place conditions on the exemption as he deems advisable for the conservation of natural resources.

Code 1950, §§ 10-81, 10-82, 10-83; 1950, p. 58; 1952, c. 412; 1956, c. 75; 1960, c. 244; 1988, c. 891; 1996, c. 285; 1997, c. 146.

§ 10.1-1164. Pine trees to be left uncut for reseeding purposes.

Every landowner who cuts, or any person who cuts or procures another to cut, or any person who owns the timber at the time of cutting and knowingly and willfully allows to be cut, for commercial purposes, timber from ten acres or more of land on which loblolly or white pine, singly or together, occur and constitute twenty-five percent or more of the live trees on each acre or acres, shall reserve and leave uncut and uninjured not less than eight cone-bearing loblolly or white pine trees fourteen inches or larger in diameter on each acre thus cut and upon each acre on which such pine trees occur singly or together, unless there is in effect for such land a planting, cutting or management plan as provided in subsection D of § 10.1-1163. Where eight cone-bearing loblolly or white pine trees fourteen inches or larger in diameter are not present on any particular acre, there shall be left uncut and uninjured for each such pine two cone-bearing pine trees of the largest diameter present less than fourteen inches in diameter. Such pine trees shall be left uncut for the purpose of reseeding the land and shall be healthy, windfirm, and of well-developed crowns, evidencing seed-bearing ability by the presence of cones in the crowns.

Code 1950, § 10-76; 1950, p. 58; 1952, c. 417; 1956, c. 75; 1960, c. 244; 1968, c. 73; 1988, c. 891; 1996, c. 285.

§ 10.1-1165. When trees left for reseeding purposes may be cut.

Pine trees which are left uncut for purposes of reseeding shall be the property of the landowner but shall not be cut until at least three years have elapsed after the cutting of the timber on such lands.

Code 1950, § 10-77; 1956, c. 75; 1960, c. 244; 1972, c. 163; 1988, c. 891.

§ 10.1-1166. Posting or publication of notices.

The State Forester shall distribute notices calling attention to the provisions of this article in conspicuous places in all counties and cities where such pine timber grows in appreciable quantities, and may publish notices in newspapers of general circulation in such counties and cities.

Code 1950, § 10-78; 1956, c. 75; 1988, c. 891.

§ 10.1-1167. Penalty for violation of article.

Any person violating any provision of this article shall be guilty of a misdemeanor and upon conviction shall be fined thirty dollars for each seed tree cut from the land in violation of this article. The total amount of fine for any one acre shall not exceed $240.

Code 1950, § 10-79; 1950, p. 58; 1956, c. 75; 1972, c. 163; 1988, c. 891; 1996, c. 285.

§ 10.1-1168. Procedure to ensure proper planting after conviction; cash deposit or bond; inspection or planting by State Forester.

When any person is convicted of failing to leave seed trees uncut as required by § 10.1-1164, the judge shall require the person so convicted to immediately post with the court a cash deposit or a bond of a reputable surety company in favor of the State Forester in the amount of thirty dollars for each seed tree cut in violation of this article. The total amount of the cash deposit or bond for any one acre shall not exceed $240.

The judge shall cause the cash deposit or surety bond to be delivered to the State Forester, who shall hold the cash or surety bond in a special account until it is used or released as hereinafter provided. The purpose of the cash or surety bond is to ensure that the general cutover area on which seed trees have been cut in violation of this article shall be planted with tree seedlings of the same species as the trees cut in violation of this article in a manner hereinafter specified.

For each acre on which trees have been cut in violation of this article, a number up to 600, as determined by the State Forester, of tree seedlings shall be planted on the general cutover area on which seed trees were cut in violation. Each seedling shall be planted in a separate hole at least six feet from any other planted seedling. Seedlings shall be planted at least six feet from any sapling or tree which may shade the planted seedling from direct sunlight. If stems of noncommercial species prevent the planting of tree seedlings in the manner herein described on any area in violation, a sufficient number of such stems shall be cut, girdled or poisoned to permit the required number of seedlings to be planted. The seedlings shall be planted during the period of the year when forest tree seedlings are customarily planted in the section of the Commonwealth in which the cutover area is located. After receipt of the tree seedlings from the nursery, care shall be taken to keep the seedling roots in a moist, uninjured condition at all times prior to actual planting, and the seedlings shall be planted in a careful, workmanlike manner. Planted seedlings shall be of the same tree species as the seed trees cut in violation, or if two or more seed tree species are cut in violation, the species of the planted seedlings shall be in proportion to the seed trees cut in violation. The above specified manner of planting and tree species planted shall be observed whether the planting is done by the person found in violation of this article or by the State Forester.

A person convicted of violating this article may plant tree seedlings on the general cutover area of the species and in the manner specified herein within one year following the date of conviction. Upon completion of the planting, the person shall immediately notify the State Forester in writing that the area has been planted. The State Forester or his representative shall then inspect the area and if he finds the planting to be done in accordance with the specifications set forth, he shall notify the person in writing and return the cash deposit or surety bond to the person depositing it.

If, upon inspection, the State Forester finds that the general cutover area or any part thereof has not been planted in the manner and during the period of year specified, or that the area has not been planted previous to one year following the date of conviction, the State Forester shall then plant the area during the next planting season, and do such forest cultural work as he deems necessary by reason of the delayed planting, keeping a careful and accurate account of all costs incurred, including a reasonable administrative cost. Following completion of the planting the State Forester shall prepare a certified statement showing the cost of planting, which shall be paid from the cash deposit, or if a surety bond has been deposited the State Forester shall collect the cost of planting from the bonding company. The State Forester shall then submit to the person making the deposit a certified statement of the cost of planting, together with any cash remaining after paying the cost of planting and forest cultural work.

The State Forester shall not be required to expend for planting and forest cultural operations more than thirty dollars per seed tree cut in violation of this article.

1956, c. 75, § 10-79.1; 1960, c. 269; 1972, c. 163; 1988, c. 891; 1996, c. 285.

§ 10.1-1169. Liability for failure to carry out planting, cutting or management plan; reforestation of area by State Forester.

A. Any person failing to carry out, fulfill or complete any term or provision of any planting, cutting, or management plan submitted to and approved by the State Forester as provided in subsection D of § 10.1-1163 shall be liable to the Commonwealth in a civil suit brought by the Attorney General in the name of the Commonwealth in any court of competent jurisdiction for, at least $240 per acre for each acre or part of an acre subject to such plan and legal fees incurred by the Commonwealth. All moneys collected pursuant to this subsection, exclusive of court costs and legal fees incurred by the Commonwealth, shall be delivered to the State Forester, who shall deposit the money in the Forestry Operations Fund in the state treasury until it is used or released as hereinafter provided. Such deposit may only be spent to ensure that the area for which the planting, cutting or management plan was approved by the State Forester shall be reforested in the manner hereinafter specified.

B. During the year following the date of payment of any judgment rendered in favor of the Commonwealth pursuant to subsection A of this section and at the season when forest tree seedlings are customarily planted in the section of the Commonwealth where the planting, cutting or management plan area is located, the State Forester shall plant, or cause to be planted, on the area, as many forest tree seedlings as he deems necessary to reforest the area adequately. The tree species used in reforesting the area may be the same as the pine species cut from the area, or the species may be a mixture suitable for reforesting the area, in the judgment of the State Forester.

C. If, upon inspection, the State Forester finds that the area for which the forest management plan was approved is covered with a growth of woody plants, sprouts, brush and briars of such a density as to retard or preclude the establishment and development of the planted tree seedlings, he may perform or cause to be performed forest cultural measures, such as bulldozing, disking, poisoning by spray, and similar measures, necessary to make the area suitable for the planting, establishment and development of tree seedlings.

D. The State Forester shall keep an accurate account of all costs involved, including reasonable administrative costs, and shall transfer such costs from the Forestry Operations Fund into the Department operating account for protection and development of the forest resources of the Commonwealth. If, after having complied with the reforestation provisions of this section, any money remains in the special account to the credit of any particular case, the unexpended balance shall be paid to the person against whom a judgment was rendered pursuant to the provisions of subsection A.

E. The expenditure by the State Forester for reforestation on any individual area as herein provided shall not exceed the amount of the judgment paid for the reforestation of such area.

1964, c. 235, § 10-83.01; 1972, c. 163; 1986, c. 567; 1988, c. 891; 1996, c. 285.

Article 10 - REFORESTATION OF TIMBERLANDS

§ 10.1-1170. Administration of article.

The State Forester shall administer the provisions of this article, including the protection, preservation and perpetuation of forest resources by means of reforestation to allow continuous growth of timber on lands suitable therefor, and is authorized to employ personnel; purchase equipment, materials, and supplies; maintain and transport equipment; and make other expenditures and payments authorized by law, and as directed by the regulations adopted for the administration of this article. In any one fiscal year, the expenditures for salaries of administrative supervisory personnel shall not exceed ten percent of the general fund appropriation and forest products taxes collected and deposited in the Reforestation of Timberlands Fund as provided in § 10.1-1174 for that particular year.

1981, c. 371, § 10-90.31; 1984, c. 750; 1986, c. 567; 1988, c. 891.

§ 10.1-1171. Exceptions.

A. This article shall not apply to any tract of land in excess of 500 acres under the sole ownership of an individual, corporation, partnership, trust, association, or any other business unit, device, or arrangement.

B. This article shall not apply to any acre or part of an acre on which the landowner is receiving federal financial assistance for growing timber.

1981, c. 371, §§ 10-90.33, 10-90.34, 10-90.35; 1988, c. 891; 1996, c. 733.

§ 10.1-1172. Repealed.

Repealed by Acts 2012, cc. 803 and 835, cl. 19.

§ 10.1-1173. Authority of State Forester; reforestation options; lien.

The State Forester is authorized, upon the request of a landowner, to examine timberland and make recommendations concerning reforestation. He may make available to landowners, with or without charge, use of specialized state-owned equipment and tree seedlings, tree seed, materials, and services of specialized state personnel for the purpose of preparing land for reforestation and reforesting land devoted to growing timber, in accordance with administrative regulations.

Upon the completion of each separate reforestation project in accordance with the recommendations and approval of the State Forester, the State Forester shall determine the total cost of the project including money paid or payable to a contractor for services performed on the project, for labor, and for other costs incurred by the landowner, including a standard rental rate value for use of state-owned equipment and the cost of tree seedlings, tree seed, materials, and specialized state personnel used on the project.

The following incentive to reforesting land may be utilized by the State Forester: whenever a landowner completes a reforestation project in accordance with the recommendations and approval of the State Forester, through the use of his own equipment, material and personnel, or through the employment of a contractor where no state equipment, materials or personnel are used, or are used

only in part, the State Forester shall determine the total cost of the project based on current commercial rental rate for machines similar to types used, cost of material, and cost of personnel where the landowner does his own work on the project, or based on the contractor's statement of cost or paid receipts furnished by the landowner where work is done by a contractor together with and at the standard rental value for use of any state-owned specialized equipment, tree seedlings, tree seed, materials, and specialized state personnel used on the project. The State Forester, from funds appropriated for the purposes of this article, may pay to the landowner an amount not to exceed seventy-five percent of the total cost of the project, as above determined, or ninety dollars per acre, whichever is the lesser.

1981, c. 371, § 10-90.36; 1984, c. 750; 1986, c. 567; 1988, c. 891.

§ 10.1-1174. Reforestation of Timberlands Fund.

All moneys paid to or collected by the State Forester for rental equipment, tree seedlings, seed and material furnished, and specialized personnel services rendered to a landowner and all moneys collected or received from settlement of liens, including principal, interest and fines, authorized under this article shall be paid into the state treasury. All such moneys shall be credited by the State Comptroller as special revenues to the Reforestation of Timberlands Fund of the Department of Forestry to be expended solely for reforesting privately owned timberlands of the Commonwealth as provided in this article.

1981, c. 371, § 10-90.37; 1984, c. 750; 1986, c. 567; 1988, c. 891.

§ 10.1-1175. Certain rights of landowner not limited.

This article shall not limit the right of any landowner to contract with individuals, organizations, and public bodies to provide for the utilization of the land for recreational purposes, or to grant open space easements over the land to public bodies.

1981, c. 371, § 10-90.39; 1988, c. 891.

§ 10.1-1176. When provisions of article effective.

This article shall not be effective during any biennium for which the General Assembly fails to appropriate from the state general fund a sum which equals or exceeds the total revenues collected from the forest products tax for the immediately preceding two years; a report of such sum shall be submitted by the State Forester to the Governor on or before November 1 of the last year of the preceding biennium.

1981, c. 371, § 10-90.38; 1988, c. 891; 1998, c. 420.

Article 11 - INSECT INFESTATION AND DISEASES OF FOREST TREES

§ 10.1-1177. Authority of Department of Forestry.

The Department of Forestry is authorized to and responsible for (i) investigating insect infestations and disease infections which affect stands of forest trees, and (ii) devising and demonstrating control measures to interested persons. The State Forester shall administer the provisions of this article.

Authority for quarantine procedure now vested in the Department of Agriculture and Consumer Services shall remain in that Department.

1952, c. 657, § 10-90.3; 1986, c. 567; 1988, c. 891.

§ 10.1-1178. Definitions.

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

"Forest land" means land on which forest trees are found.

"Forest trees" means only those trees which are a part of and constitute a stand of potential, immature, or mature commercial timber trees. The term "forest trees" includes shade trees of any species around houses, along highways and within cities and towns if the trees constitute an insect or disease menace to nearby timber trees or timber stands.

"Infection" means infection by any disease affecting forest trees which is declared by the State Forester to be dangerously injurious to forest trees.

"Infestation" means infestation by means of any insect which is declared by the State Forester to be dangerously injurious to forest trees.

"Person" includes an individual, partnership, corporation, company, society or association.

1952, c. 657, § 10-90.4; 1986, c. 539; 1988, c. 891.

§ 10.1-1179. State Forester to investigate; notice to landowners.

Where an insect infestation or disease infection is believed to exist on forest land within this Commonwealth, the State Forester shall investigate the condition. Whenever he finds that an infestation or infection exists he shall give notice in writing by mail or otherwise to each forest landowner within the affected area, advising him of the nature of the infestation or infection and the recommended control measures, and offering him technical advice on methods of carrying out control measures.

1952, c. 657, § 10-90.5; 1988, c. 891.

§ 10.1-1180. Cooperation with individuals and public agencies.

The Department of Forestry is authorized to cooperate with persons, counties, state agencies, and United States government agencies, and the appropriate authorities of adjacent states concerning forest tree insect and disease investigation and control, and to accept money, gifts and donations and to disburse the same for the purpose of carrying out the provisions of this article.

1952, c. 657, § 10-90.7; 1986, c. 567; 1988, c. 891.

§ 10.1-1181. Control of Forest Tree Insects and Diseases Fund.

A special fund in the state treasury known as the Control of Forest Tree Insects and Diseases Fund shall consist of all moneys appropriated thereto by the General Assembly, all revenues collected under the provisions of this article, and any moneys paid into the state treasury or to the State Forester, the Board of Forestry, or the Department of Forestry by the federal government or any agency

thereof to be used for the purposes of this article. All such funds are hereby appropriated to the Department of Forestry to be used to carry out the purposes of this article.

1952, c. 657, § 10-90.9; 1986, c. 567; 1988, c. 891.

Article 12 - SILVICULTURAL ACTIVITIES AFFECTING WATER QUALITY

§ 10.1-1181.1. Definitions.

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

"Operator" means any person that operates or has operated or exercises or has exercised control over any silvicultural activity.

"Owner" means any person that (i) owns or leases land on which silvicultural activity occurs or has occurred or (ii) owns timber on land on which silvicultural activity occurs or has occurred.

"Pollution" means such alteration of the physical, chemical or biological properties of any state waters resulting from sediment deposition as will or is likely to create a nuisance or render such waters (i) harmful or detrimental or injurious to the public health, safety or welfare, or to the health of animals, fish or aquatic life; (ii) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (iii) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses.

"Silvicultural activity" means any forest management activity, including but not limited to the harvesting of timber, the construction of roads and trails for forest management purposes, and the preparation of property for reforestation.

"Special order" means a special order or emergency special order issued under subsection B or C of § 10.1-1181.2.

1993, c. 948; 1998, c. 578.

§ 10.1-1181.2. Conduct of silvicultural activities; issuance of special orders.

A. If the State Forester believes that an owner or operator has conducted or is conducting or has allowed or is allowing the conduct of any silvicultural activity in a manner that is causing or is likely to cause pollution, he may enter upon the silvicultural operation for inspection to determine whether the activity is causing or likely to cause pollution and notify the owner or operator regarding the activity that is causing or likely to cause pollution and recommend (i) corrective measures and (ii) a reasonable time period to prevent, mitigate, or eliminate the pollution. If the owner or operator fails to take action to prevent, mitigate, or eliminate the pollution, the State Forester shall issue a special order pursuant to subsection B or C. Failure of the State Forester to notify an owner or operator of such corrective measures shall not impair the State Forester's authority to issue special orders pursuant to subsection B or C.

B. The State Forester shall have the authority to issue special orders to any owner or operator who has conducted or is conducting, or has allowed or is allowing to be conducted, any silvicultural activity

in a manner that is causing or is likely to cause pollution, to cease immediately all or part of the silvicultural activities on the site, and to implement specified corrective measures within a stated period of time. Such special orders are to be issued only after the owner or operator has been given the opportunity for a hearing with reasonable notice to the owner or operator, or both, of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection D.

C. If the State Forester finds that any owner or operator is conducting any silvicultural activity in a manner that is causing or is likely to cause an alteration of the physical, chemical or biological properties of any state waters resulting from sediment deposition presenting an imminent and substantial danger to (i) the public health, safety or welfare, or the health of animals, fish or aquatic life; (ii) a public water supply; or (iii) recreational, commercial, industrial, agricultural or other reasonable uses, the State Forester may issue, without advance notice or hearing, an emergency order directing the owner or operator, or both, to cease immediately all or part of the silvicultural activities on the site, and to implement specified corrective measures within a stated period of time. The commencement of proceedings by the State Forester for the issuance of a special order pursuant to subsection B shall not impair the State Forester's authority to issue an emergency special order pursuant to this subsection. The State Forester shall provide an opportunity for a hearing, after reasonable notice as to the time and place thereof to the owner or operator, to affirm, modify, amend or cancel such emergency special order.

D. The owner or operator to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of the owner, or operator, or by personal delivery by an agent of the State Forester, and the time limits specified shall be counted from the date of receipt.

E. The State Forester shall not issue a special order to any owner or operator who has incorporated generally acceptable water quality protection techniques in the operation of silvicultural activities, which techniques have failed to prevent pollution, if the State Forester determines that the pollution is the direct result of unusual weather events that could not have been reasonably anticipated.

F. Any hearing required under this section shall be conducted in accordance with § 2.2-4020 unless the parties consent to informal proceedings.

G. The State Forester shall not issue a notice under subsection A or a special order or emergency special order under subsection B or C more than one year after the silvicultural activity has occurred on the property. Any such notice, special order, or emergency special order shall remain in effect until the State Forester determines that corrective measures specified therein have been implemented.

H. Prior to completion but not later than three working days after the commencement of an operation, the operator shall notify the State Forester of the commercial harvesting of timber. For the purpose of this section, commercial harvesting of timber means the harvesting of trees for the primary purpose of transporting to another site for additional manufacturing. The notification may be verbal or written and shall (i) specify the location and the actual or anticipated date of the activity, (ii) include an owner's

name or the owner's representative or agent and contact information, and (iii) be provided in a manner or form as prescribed by the State Forester. If an operator fails to comply with the provisions of this subsection, the State Forester may assess a civil penalty of $250 for the initial violation and not more than $1,000 for any subsequent violation within a 24-month period by the operator. Such civil penalties shall be paid into the state treasury and credited to the Virginia Forest Water Quality Fund pursuant to § 10.1-1181.7.

1993, c. 948; 1998, c. 578; 2002, cc. 293, 304, 376; 2003, c. 812; 2004, c. 228; 2009, c. 572.

§ 10.1-1181.3. Civil penalties.

A. Any owner or operator who violates, or fails or refuses to obey any special order may be assessed a civil penalty by the State Forester. Such penalty shall not exceed $5,000 for each violation. Each day of a continuing violation may be deemed a separate violation for purposes of assessing penalties. In determining the amount of the penalty, consideration shall be given to the owner's or operator's history of noncompliance; the seriousness of the violation, including any irreparable harm to the environment and any hazard to the health or safety of the public; whether the owner or operator was negligent; and the demonstrated good faith of the owner or operator in reporting and remedying the pollution.

B. A civil penalty may be assessed by the State Forester only after the owner or operator has been given an opportunity for a hearing. Any hearing required under this section shall be conducted in accordance with § 2.2-4020, unless the parties consent to informal proceedings. If the owner or operator fails to avail himself of the opportunity for a formal hearing, a civil penalty shall be assessed by the State Forester after the State Forester finds that a violation of a special order has occurred and the amount of the civil penalty warranted, and issues an order requiring that the civil penalty be paid.

C. If a person who is required under this article to pay a civil penalty fails to do so, the State Forester may transmit a true copy of the final order assessing such penalty to the clerk of circuit court of any county or city wherein it is ascertained that the person owing the penalty has any estate; and the clerk to whom such copy is sent shall record it, as a judgment is required by law to be recorded, and shall index the same in the name of the Commonwealth as well as of the person owing the penalty, and thereupon there shall be a lien in favor of the Commonwealth on the property of the owner or operator within such county or city in the amount of the penalty. The State Forester may collect civil penalties that are owed in the same manner as provided by law in respect to judgment of a court of record. All civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Forest Water Quality Fund pursuant to § 10.1-1181.7.

D. With the consent of any owner or operator who has violated or failed, neglected or refused to obey any special order of the State Forester issued pursuant to subsection B or C of § 10.1-1181.2, the State Forester may provide, in an order issued by the State Forester against such owner or operator, for the payment of civil charges for violations in specific sums, not to exceed the limit specified in subsection A of this section. Such civil charges shall be in lieu of any civil penalty that could be imposed

under subsection A of this section, and shall be placed in the Virginia Forest Water Quality Fund pursuant to § 10.1-1181.7.

1993, c. 948; 2004, c. 228.

§ 10.1-1181.4. Final decisions; costs of hearing examiner.

A. Any final order or decision rendered pursuant to this article shall be reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the decision is based. Certified copies of the written decision shall be delivered or mailed by certified mail to the parties affected by the decision.

B. If any final agency case decision is rendered following a hearing conducted in accordance with § 2.2-4020 presided over by a hearing officer, the officer shall be paid by the State Forester if the owner or operator is the prevailing party, or by the owner or operator if the State Forester is the prevailing party. The findings of the hearing officer shall specify which party prevailed in the hearing.

1993, c. 948.

§ 10.1-1181.5. Judicial review.

Any person aggrieved by a final order or decision under this article shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 2.2-4000 et seq.). The commencement of a proceeding for judicial review under this section shall not, unless specifically ordered by the court, operate as a stay of the order or decision of the State Forester.

1993, c. 948.

§ 10.1-1181.6. Enforcement by injunction.

Any owner or operator violating or failing, neglecting or refusing to obey any special order issued by the State Forester may be compelled in a proceeding instituted in any appropriate circuit court by the State Forester to obey same and to comply therewith by injunction, mandamus or other appropriate remedy, without the necessity of showing that an adequate remedy at law does not exist.

1993, c. 948.

§ 10.1-1181.7. Virginia Forest Water Quality Fund established; administration and disbursements.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the Virginia Forest Water Quality Fund, hereafter referred to as the Fund, to be used for education efforts, promoting the implementation of proper silvicultural activities, research, and monitoring the effectiveness of practices to prevent erosion and sedimentation. The Fund shall be a nonlapsing fund consisting of moneys received and credited to the Fund by the State Treasurer for civil penalties and civil charges assessed pursuant to this article. Interest earned on the Fund shall be credited to the Fund. The Fund shall be established on the books of the State Comptroller. Any money remaining in the Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund.

B. Disbursement of moneys from the Fund shall be made by the State Comptroller at the written request of the State Forester. Disbursements from the Fund may be made for the purposes set forth in

subsection A of this section, including, but not limited to, personnel, administrative, and equipment costs and expenses directly incurred by the Department in connection with such purposes.

1993, c. 948.

Article 13 - FORESTERS

§ 10.1-1181.8. Definitions.

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

"Forester" means any person who is engaged in the science, profession and practice of forestry and who possesses the qualifications required by this article.

"Forestry" means the science, art and practice of creating, managing, using and conserving forests and associated natural resources for human benefit and in a sustainable manner to meet desired goals, needs, and values.

2002, c. 447.

§ 10.1-1181.9. Requirements for forester title.

A. In order to use the title of forester in connection with any practice of forestry, the person shall (i) hold a baccalaureate or higher degree from a public or private institution of higher education, having completed a degree program that (a) is accredited by the Society of American Foresters (the Society) and (b) meets the minimum education criteria set forth by the Society in the fields of forest ecology and biology, management of forest resources, and forest resources policy and administration or (ii) have met the educational criteria for Certified Forester as reviewed and officially recognized in writing by the Society.

B. No person shall be appointed by the Governor to serve as State Forester unless he meets the requirements of clause (i) of subsection A.

2002, c. 447; 2019, c. 158.

§ 10.1-1181.10. Activities not prohibited.

The provisions of this article shall not prohibit:

1. Any person from performing forestry functions and services so long as he does not represent himself to the public as a forester;

2. An employee or subordinate of a forester from performing forestry functions and services; or

3. The practice of any profession or occupation that is regulated by a regulatory board within the Department of Professional and Occupational Regulation or other state agency.

2002, c. 447.

§ 10.1-1181.11. Injunctive relief.

The Attorney General or any other person may apply to the circuit court in a jurisdiction where venue is proper for injunctive relief to restrain a person who has violated the provisions of this article.

2002, c. 447.

§ 10.1-1181.12. Exemption from article.

The provisions of this article shall not apply to any person who supplies the Department of Forestry with information or documentation showing that such person was actively engaged in the practice of forestry for a continuous period of at least ten years prior to July 1, 2002. The Department shall maintain and make available to the public a list of all persons who satisfy the requirements of this section.

2002, c. 447.

Article 14 - Voluntary Forest Mitigation

§ 10.1-1181.13. Definitions.

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

"Construction project" means any land-disturbing activity that involves construction of infrastructure, including interstate highways, pipelines, or energy generation and transmission facilities.

"Forest mitigation" means addressing the direct and indirect adverse impacts to forests that may be caused by a construction project by avoiding and minimizing impacts to the extent practicable and then compensating for the remaining impacts.

2020, c. 959.

§ 10.1-1181.14. Applicability.

The provisions of this article shall not apply to any forest mitigation required by law or to any mitigation agreements entered into before July 1, 2020.

2020, c. 959.

§ 10.1-1181.15. Forest mitigation agreements.

A. The Secretary of Natural Resources, the Secretary of Agriculture and Forestry, or any agency within those secretariats, or the Virginia Outdoors Foundation may enter into an agreement with the owner or operator of construction projects to accomplish forest mitigation. At a minimum, any such agreement shall:

1. Document the extent to which the construction project has been designed to avoid and minimize adverse impacts to forests;

2. Provide funding for compensation for impacts that approximates at least no net loss of forest acreage and function;

3. Provide for the payment of such funds by the owner or operator to a nonprofit organization, the Virginia Outdoors Foundation, or an agency within the secretariats of Agriculture and Forestry or Natural Resources. The recipient of the funds shall establish criteria for the expenditure of the funds, shall provide such criteria to the public, and shall regularly provide to the public updated information on how funds are spent; and

4. Ensure that expenditures of the funds occur in reasonable proximity to the forest impacts that are caused by the construction project. Reasonable proximity shall be determined by the recipient of the funds and shall be based on appropriate ecological boundaries, with consideration given to communities adversely affected by the construction project.

B. Nothing in this section shall preclude the expenditure of funds (i) by the recipient of the funds for the costs of administration of the funds or (ii) for water quality protection and improvement, land conservation, or environmental education.

C. No agreement entered into pursuant to this article shall identify any specific expenditure.

D. No agreement entered into pursuant to this article shall include any waiver of liability for environmental damage caused by the construction project. No agreement entered into under this article shall guarantee regulatory approval for a construction project by any state agency.

E. No forest mitigation agreement entered into pursuant to this article shall prohibit sustainable forest management on a property receiving funding except as necessary to comply with a requirement of the Commonwealth that specific conservation values be protected on such property.

2020, c. 959.

Chapter 11.1 - Department of Environmental Quality

Article 1 - General Provisions

§ 10.1-1182. Definitions.

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

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Environment" means the natural, scenic, and historic attributes of the Commonwealth.

"Environmental justice" means the fair treatment and meaningful involvement of every person, regardless of race, color, national origin, faith, disability, or income, in the development, implementation, and enforcement of environmental laws, regulations, and policies.

"Special order" means an administrative order issued to any party that has a stated duration of not more than twelve months and that may include a civil penalty of not more than $10,000.

1992, c. 887; 1996, c. 1005; 2020, c. 454.

§ 10.1-1182.1. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this chapter the Department 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 Department may be sent by regular mail.

2011, c. 566.

§ 10.1-1183. Creation of Department of Environmental Quality; statement of policy.

A. There is hereby created a Department of Environmental Quality by the consolidation of the programs, functions, staff, facilities, assets and obligations of the following agencies: the State Water Control Board, the Department of Air Pollution Control, the Department of Waste Management, and the Council on the Environment. Wherever in this title and in the Code of Virginia reference is made to the Department of Air Pollution Control, the Department of Waste Management or the Council on the Environment, or any division thereof, it shall mean the Department of Environmental Quality.

B. It is the policy of the Department of Environmental Quality to protect and enhance the environment of Virginia in order to promote the health and well-being of the Commonwealth's citizens, residents, and visitors in accordance with applicable laws and regulations. The purposes of the Department are:

1. To assist in the effective implementation of the Constitution of Virginia by carrying out state policies aimed at conserving the Commonwealth's natural resources and protecting its atmosphere, land, and waters from pollution.

2. To address climate change by developing and implementing policy and regulatory approaches to reducing climate pollution and promoting climate resilience in the Commonwealth and by ensuring that climate impacts and climate resilience are taken into account across all programs and permitting processes.

3. To coordinate permit review and issuance procedures to protect all aspects of Virginia's environment.

4. To further environmental justice and enhance public participation in the regulatory and permitting processes.

5. To establish and effectively implement a pollution prevention program to reduce the impact of pollutants on Virginia's natural resources.

6. To establish procedures for, and undertake, long-range environmental program planning and policy analysis, including assessments of emerging environmental challenges.

7. To conduct comprehensive evaluations of the Commonwealth's environmental protection programs.

8. To develop uniform administrative systems to ensure coherent environmental policies.

9. To coordinate state reviews with federal agencies on environmental issues, such as environmental impact statements.

10. To promote environmental quality through public hearings and expeditious and comprehensive permitting, inspection, monitoring, and enforcement programs, and provide effective service delivery to the regulated community.

11. To advise the Governor and General Assembly, and, on request, assist other officers, employees, and public bodies of the Commonwealth, on matters relating to environmental quality and the effectiveness of actions and programs designed to enhance that quality.

12. To ensure that there is consistency in the enforcement of the laws, regulations, and policies as they apply to holders of permits or certificates issued by the Department, whether the owners or operators of such regulated facilities are public sector or private sector entities, including the development of electronic recordkeeping and document transmittal systems that encourage the use of electronic methods in performing the Department's business as a means of furthering both resource conservation and transaction efficiency.

13. To ensure the fair treatment and meaningful involvement of all people regardless of race, color, national origin, faith, disability, or income with respect to the administration of environmental laws, regulations, and policies.

C. Wherever the term is used in this chapter or in other statutory or regulatory provisions that the Department administers, (i) "certified mail" means electronically certified or postal certified mail, except that this provision shall apply only to the mailing of plan approvals, permits, or certificates issued under the provisions of this chapter and those 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.), and only where the recipient has notified the Department of his consent to receive plan approvals, permits, or certificates by electronic mail, and (ii) "mail" means electronic or postal delivery. Any statutory provisions requiring use of "certified mail" to transmit special orders or administrative orders pursuant to enforcement proceedings shall mean postal certified mail.

1992, c. 887; 1999, c. 207; 2012, cc. 803, 835; 2013, c. 348; 2020, cc. 454, 492.

§ 10.1-1184. State Air Pollution Control Board, State Water Control Board, and Virginia Waste Management Board continued.

The State Air Pollution Control Board, State Water Control Board, and Virginia Waste Management Board are continued and shall promote the environmental quality of the Commonwealth. All policies and regulations adopted or promulgated by the State Air Pollution Control Board, State Water Control Board, Virginia Waste Management Board, and the Council on the Environment and in effect on December 31, 1992, shall continue to be in effect until and unless superseded by new policies or regulations. Representatives of the three Boards shall meet jointly at least twice a year to receive public comment and deliberate about environmental issues of concern to the Commonwealth, including the development and implementation of regulations for multimedia permitting, increased efficiencies for the processing of permit applications and information requests, the enhancement of environmental protection, and opportunities for effective public participation.

1992, c. 887; 2008, cc. 276, 557.

§ 10.1-1185. Appointment of Director; powers and duties of Director.

The Department shall be headed by a Director appointed by the Governor to serve at his pleasure. The Director shall be an experienced administrator with knowledge of environmental protection and government operation and shall have demonstrated expertise in organizational management and environmental science, environmental law, or environmental policy. The Director of the Department of

Environmental Quality shall, under the direction and control of the Governor, exercise such power and perform such duties as are conferred or imposed upon him by law and shall perform such other duties as may be required of him by the Governor and the following Boards: the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board. The Director or his designee shall serve as executive officer of the aforementioned Boards.

All powers and duties conferred or imposed upon the Executive Director of the Department of Air Pollution Control, the Executive Director of the State Water Control Board, the Administrator of the Council on the Environment, and the Director of the Department of Waste Management are continued and conferred or imposed upon the Director of the Department of Environmental Quality or his designee. Wherever in this title and in the Code of Virginia reference is made to the head of a division, department or agency hereinafter transferred to this Department, it shall mean the Director of the Department of Environmental Quality.

1992, c. 887; 2008, cc. 276, 557.

§ 10.1-1186. General powers of the Department.

The Department shall have the following general powers, any of which the Director may delegate as appropriate:

1. Employ such personnel as may be required to carry out the duties of the Department;

2. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other states, other state agencies and governmental subdivisions of the Commonwealth;

3. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable;

4. Accept and administer services, property, gifts and other funds donated to the Department;

5. Implement all regulations as may be adopted by the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board;

6. Administer, under the direction of the Boards, funds appropriated to it for environmental programs and make contracts related thereto;

7. Advise and coordinate the responses of state agencies to notices of proceedings by the State Water Control Board to consider certifications of hydropower projects under 33 U.S.C. § 1341;

8. Advise interested agencies of the Commonwealth of pending proceedings when the Department of Environmental Quality intervenes directly on behalf of the Commonwealth in a Federal Energy Regulatory Commission proceeding or when the Department of Wildlife Resources intervenes in a Federal

Energy Regulatory Commission proceeding to coordinate the provision of information and testimony for use in the proceedings;

9. Notwithstanding any other provision of law and to the extent consistent with federal requirements, following a proceeding as provided in § 2.2-4019, issue special orders to any person to comply with: (i) the provisions of any law administered by the Boards, the Director or the Department, (ii) any condition of a permit or a certification, (iii) any regulations of the Boards, or (iv) any case decision, as defined in § 2.2-4001, of the Boards or Director. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Director shall not delegate his authority to impose civil penalties in conjunction with issuance of special orders. For purposes of this subdivision, "Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board; and

10. Perform all acts necessary or convenient to carry out the purposes of this chapter.

1992, c. 887; 1996, c. 1005; 2012, cc. 803, 835; 2020, c. 958.

§ 10.1-1186.01. Reimbursements to localities for upgrades to treatment works.

A. The General Assembly shall fund grants to finance the reasonable costs of design and installation of nutrient removal technology at the publicly owned treatment works designated as significant dischargers contained in subsection E, or as eligible nonsignificant dischargers as defined in § 10.1-2117. Notwithstanding § 10.1-2128, at such time as grant disbursements pursuant to this section reach 200 percent of the appropriations provided for in Chapter 951 of the Acts of Assembly of 2005 and Chapter 10 of the Acts of Assembly of 2006, Special Session I, the House Committee on Agriculture, Chesapeake and Natural Resources, the House Committee on Appropriations, the Senate Committee on Agriculture, Conservation and Natural Resources, and the Senate Committee on Finance shall review the future funding needs to meet the purposes of the Water Quality Improvement Act and the appropriate funding mechanism for such needs.

B. The disbursement of grants for the design and installation of nutrient removal technology at those publicly owned treatment works included in subsection E and eligible nonsignificant dischargers shall be made monthly based on a requisition submitted by the grant recipient in the form requested by the Department. Each requisition shall include written certification that the applicable local share of the cost of nutrient removal technology for that portion of the project covered by such requisition has been incurred or expended. Except as may otherwise be approved by the Department, disbursements shall not exceed 95 percent of the total grant amount until satisfactory completion of the project. The distribution of the grants shall be effected by one of the following methods:

1. In payments to be paid by the State Treasurer out of funds appropriated to the Water Quality Improvement Fund pursuant to § 10.1-2131;

2. Over a specified time through a contractual agreement entered into by the Treasury Board and approved by the Governor, on behalf of the Commonwealth, and the locality or public service authority

undertaking the design and installation of nutrient removal technology, such payments to be paid by the State Treasurer out of funds appropriated to the Treasury Board; or

3. In payments to be paid by the State Treasurer upon request of the Director of Environmental Quality out of proceeds from bonds issued by the Virginia Public Building Authority, in consultation with the Department of Environmental Quality, pursuant to §§ 2.2-2261, 2.2-2263, and 2.2-2264, including the Commonwealth's share of the interest costs expended by the locality or regional authority for financing such project during the period from 50% completion of construction to final completion of construction.

C. The General Assembly shall have the sole authority to determine whether disbursement will be made pursuant to subdivision B 1, B 2, or B 3, or a combination thereof; provided that a disbursement shall only be made pursuant to subdivision B 3 upon a certification by the Department of Environmental Quality that project grant reimbursements for the fiscal year will exceed the available funds in the Water Quality Improvement Fund.

D. Exclusive of any deposits made pursuant to § 10.1-2128, the grants awarded pursuant to this section shall include such appropriations as provided for in Chapter 951 of the Acts of Assembly of 2005; and Chapter 10 of the Acts of Assembly of 2006, Special Session I.

E. The disbursement of grants to finance the costs of design and installation of nutrient removal technology at the following 89 publicly owned treatment works and other eligible nonsignificant dischargers shall be provided pursuant to the distribution methodology included in § 10.1-2131. However, in no case shall any publicly owned treatment works receive a grant of less than 35% of the costs of the design and installation of nutrient removal technology.

a	FACILITY NAME	OWNER
b	Shenandoah - Potomac River Basin	
c	ACSA-Fishersville STP	Augusta County Service Authority
d	Luray STP	Town of Luray
e	ACSA-Middle River Regional STP	Augusta County Service Authority
f	HRRSA-North River WWTF	Harrisonburg-Rockingham Regional Sewer Authority
g	ACSA-Stuarts Draft STP	Augusta County Service Authority
h	Waynesboro STP	City of Waynesboro
i	ACSA-Weyers Cave STP	Augusta County Service Authority
j	Berryville STP	Town of Berryville
k	Front Royal STP	Town of Front Royal
l	Mount Jackson STP	Town of Mount Jackson
m	New Market STP	Town of New Market
n	Shenandoah Co.-North Fork Regional WWTP	Shenandoah County
o	Stoney Creek Sanitary District STP	Stoney Creek Sanitary District

p	Strasburg STP	Town of Strasburg
q	Woodstock STP	Town of Woodstock
r	FWSA-Opequon Water Reclamation Facility	Frederick-Winchester Service Authority
s	FWSA-Parkins Mill WWTF	Frederick-Winchester Service Authority
t	Purcellville-Basham Simms WWTF	Town of Purcellville
u	LCSA-Broad Run WRF	Loudoun County Service Authority
v	Leesburg WPCF	Town of Leesburg
w	Round Hill WWTP	Town of Round Hill
x	PWCSA-H.L. Mooney WWTF	Prince William County Service Authority
y	Upper Occoquan Sewage Authority WWTP	Upper Occoquan Sewage Authority
z	FCW&SA-Vint Hill WWTF	Fauquier County Water and Sewer Authority
aa	Alexandria Sanitation Authority WWTP	Alexandria Sanitation Authority
ab	Arlington Co. WPCF	Arlington County
ac	Fairfax Co. - Noman-Cole Pollution Control Facility	Fairfax County
ad	Stafford Co.-Aquia WWTP	Stafford County
ae	Colonial Beach STP	Town of Colonial Beach
af	Dahlgren Sanitary District WWTP	King George County Service Authority
ag	Fairview Beach STP	King George County Service Authority
ah	Purkins Corner WWTP	King George County Service Authority
ai	District of Columbia - Blue Plains STP (Virginia portion)	Loudoun County Service Authority and Fairfax County contract for capacity
aj	Rappahannock River Basin	
ak	Culpeper WWTP	Town of Culpeper
al	Marshall WWTP	Town of Marshall
am	Mountain Run WWTP	Culpeper County
an	Orange STP	Town of Orange
ao	Rapidan STP	Rapidan Service Authority
ap	FCW&SA-Remington WWTP	Fauquier County Water and Sewer Authority
aq	Warrenton STP	Town of Warrenton
ar	Wilderness Shores WWTP	Rapidan Service Authority
as	Spotsylvania Co.-FMC WWTF	Spotsylvania County
at	Fredericksburg WWTF	City of Fredericksburg
au	Stafford Co.-Little Falls Run WWTF	Stafford County
av	Spotsylvania Co.-Massaponax WWTF	Spotsylvania County
aw	Montross-Westmoreland WWTP	Westmoreland County

ax	Oakland Park STP	King George County Service Authority
ay	Tappahannock WWTP	Town of Tappahannock
az	Urbanna WWTP	Hampton Roads Sanitation District
ba	Warsaw STP	Town of Warsaw
bb	Reedville Sanitary District WWTP	Reedville Sanitary District
bc	Kilmarnock WWTP	Town of Kilmarnock
bd	York River Basin	
be	Caroline Co. Regional STP	Caroline County
bf	Gordonsville STP	Rapidan Service Authority
bg	Ashland WWTP	Hanover County
bh	Doswell WWTP	Hanover County
bi	HRSD-York River STP	Hampton Roads Sanitation District
bj	Parham Landing WWTP	New Kent County
bk	Totopotomoy WWTP	Hanover County
bl	HRSD-West Point STP	Hampton Roads Sanitation District
bm	HRSD-Mathews Courthouse STP	Hampton Roads Sanitation District
bn	James River Basin	
bo	Buena Vista STP	City of Buena Vista
bp	Clifton Forge STP	Town of Clifton Forge
bq	Covington STP	City of Covington
br	Lexington-Rockbridge Regional WQCF	Maury Service Authority
bs	Alleghany Co.-Low Moor STP	Alleghany County
bt	Alleghany Co.-Lower Jackson River WWTP	Alleghany County
bu	Amherst-Rutledge Creek WWTP	Town of Amherst
bv	Lynchburg STP	City of Lynchburg
bw	RWSA-Moores Creek Regional STP	Rivanna Water and Sewer Authority
bx	Crewe WWTP	Town of Crewe
by	Farmville WWTP	Town of Farmville
bz	Chesterfield Co.-Falling Creek WWTP	Chesterfield County
ca	Henrico Co. WWTP	Henrico County
cb	Hopewell Regional WWTF	City of Hopewell
cc	Chesterfield Co.-Proctors Creek WWTP	Chesterfield County
cd	Richmond WWTP	City of Richmond
ce	South Central Wastewater Authority WWTF	South Central Wastewater Authority

cf	Chickahominy WWTP	New Kent County
cg	HRSD-Boat Harbor STP	Hampton Roads Sanitation District
ch	HRSD-James River STP	Hampton Roads Sanitation District
ci	HRSD-Williamsburg STP	Hampton Roads Sanitation District
cj	HRSD-Nansemond STP	Hampton Roads Sanitation District
ck	HRSD-Army Base STP	Hampton Roads Sanitation District
cl	HRSD-Virginia Initiative Plant STP	Hampton Roads Sanitation District
cm	HRSD-Chesapeake/Elizabeth STP	Hampton Roads Sanitation District
cn	Eastern Shore Basin	
co	Cape Charles WWTP	Town of Cape Charles
cp	Onancock WWTP	Town of Onancock
cq	Tangier Island WWTP	Town of Tangier

F. To the extent that any publicly owned treatment works receives less than the grant specified pursuant to § 10.1-2131, any year-end revenue surplus or unappropriated balances deposited in the Water Quality Improvement Fund, as required by § 10.1-2128, shall be prioritized in order to augment the funding of those projects for which grants have been prorated. Any additional reimbursements to these prorated projects shall not exceed the total reimbursement amount due pursuant to the formula established in subsection E of § 10.1-2131.

G. Notwithstanding the provisions of subsection B of § 10.1-2131, the Director of the Department of Environmental Quality shall not be required to enter into a grant agreement with a facility designated as a significant discharger or eligible nonsignificant discharger if the Director determines that the use of nutrient credits in accordance with the Chesapeake Bay Watershed Nutrient Credit Exchange Program (§ 62.1-44.19:12 et seq.) would be significantly more cost-effective than the installation of nutrient controls for the facility in question.

2007, cc. 851, 900; 2008, c. 572.

§ 10.1-1186.1. Department to publish toxics inventory.

The Department of Environmental Quality shall publish in March of each year the information reported by industries pursuant to 42 U.S.C. § 11023 in its document known as the "Virginia Toxic Release Inventory." The report shall be (i) organized by chemical, facility and facility location, and standard industrial classification code, and (ii) distributed to newspapers of general circulation and television and radio stations. The report shall include the information collected for the most recent calendar year for which data is available prior to the March publication date.

1997, c. 155.

§ 10.1-1186.1:1. Hazardous Waste Site Inventory.

A. The Department shall compile and maintain a Hazardous Waste Site Inventory (the Inventory) comprising a current listing of sites permitted by or in corrective action under the Department at which the disposal of hazardous waste, as defined in § 10.1-1400 and not otherwise excluded from regulation

as hazardous waste, has occurred. The Inventory shall contain specific information about each listed site, including (i) the location of the site, (ii) the nature and known characteristics of the wastes disposed of at the site, and (iii) the status of any remedial or corrective action undertaken or planned for the site. The Department shall only disclose in the Inventory information that is not otherwise subject to an exemption from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

B. The Department shall publish the Inventory by July 1, 2021, update it at least annually thereafter, and post it on the Department's website.

2020, c. 491.

§ 10.1-1186.2. Supplemental environmental projects.

A. As used in this section, "supplemental environmental project" means an environmentally beneficial project undertaken as partial settlement of a civil enforcement action and not otherwise required by law.

B. The State Air Pollution Control Board, the State Water Control Board, the Virginia Waste Management Board, or the Director acting on behalf of one of these boards or under his own authority in issuing any administrative order, or any court of competent jurisdiction as provided for under this Code, may, in its or his discretion and with the consent of the person subject to the order, provide for such person to undertake one or more supplemental environmental projects. The project shall have a reasonable geographic nexus to the violation or, if no such project is available, shall advance at least one of the declared objectives of the environmental law or regulation that is the basis of the enforcement action. Performance of such projects shall be enforceable in the same manner as any other provision of the order.

C. The following categories of projects may qualify as supplemental environmental projects, provided the project otherwise meets the requirements of this section: public health, pollution prevention, pollution reduction, environmental restoration and protection, environmental compliance promotion, and emergency planning and preparedness. In determining the appropriateness and value of a supplemental environmental project, the following factors shall be considered by the enforcement authority: net project costs, benefits to the public or the environment, innovation, impact on minority or low income populations, multimedia impact, and pollution prevention. The costs of those portions of a supplemental environmental project that are funded by state or federal low-interest loans, contracts or grants shall be deducted from the net project cost in evaluating the project. In each case in which a supplemental environmental project is included as part of a settlement, an explanation of the project with any appropriate supporting documentation shall be included as part of the case file.

D. Nothing in this section shall require the disclosure of documents exempt from disclosure pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.).

E. Any decision whether or not to agree to a supplemental environmental project is within the sole discretion of the applicable board, official or court and shall not be subject to appeal.

F. Nothing in this section shall be interpreted or applied in a manner inconsistent with applicable federal law or any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

1997, cc. 623, 628.

§ 10.1-1186.2:1. Impact of electric generating facilities.

A. The Department and the State Air Pollution Control Board have the authority to consider the cumulative impact of new and proposed electric generating facilities within the Commonwealth on attainment of the national ambient air quality standards.

B. The Department shall enter into a memorandum of agreement with the State Corporation Commission regarding the coordination of reviews of the environmental impacts of proposed electric generating facilities that must obtain certificates from the State Corporation Commission. When considering the environmental impact of any renewable energy (defined in § 56-576) electrical utility facility, the Department shall consult with interested agencies of the Commonwealth that have expertise in natural resource management. The Department shall submit recommendations to the State Corporation Commission that take into account the information and comments submitted by such natural resource agencies concerning the potential environmental impacts of the proposed electric generating facility. The Department's recommendations shall include: (i) specific mitigation measures considered necessary to minimize adverse environmental impacts; (ii) any additional site-specific studies considered to be necessary; and (iii) the scope and duration of any such studies. Nothing in this subsection shall alter or affect the Rules of Practice and Procedure of the State Corporation Commission.

C. Prior to the close of the Commission's record on an application for certification of an electric generating facility pursuant to § 56-580, the Department shall provide to the State Corporation Commission a list of all environmental permits and approvals that are required for the proposed electric generating facility and shall specify any environmental issues, identified during the review process, that are not governed by those permits or approvals or are not within the authority of, and not considered by, the Department or other participating governmental entity in issuing such permits or approvals. The Department may recommend to the Commission that the Commission's record remain open pending completion of any required environmental review, approval or permit proceeding. All agencies of the Commonwealth shall provide assistance to the Department, as requested by the Director, in preparing the information required by this subsection.

2002, c. 483; 2008, c. 528.

§ 10.1-1186.3. Additional powers of Boards; mediation; alternative dispute resolution.

A. The State Air Pollution Control Board, the State Water Control Board and the Virginia Waste Management Board, in their discretion, may employ mediation as defined in § 8.01-581.21, or a dispute resolution proceeding as defined in § 8.01-576.4, in appropriate cases to resolve underlying issues, reach a consensus or compromise on contested issues. An "appropriate case" means any process related to the development of a regulation or the issuance of a permit in which it is apparent that there

are significant issues of disagreement among interested persons and for which the Board finds that the use of a mediation or dispute resolution proceeding is in the public interest. The Boards shall consider not using a mediation or dispute resolution proceeding if:

1. A definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

2. The matter involves or may bear upon significant questions of state policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the Board;

3. Maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

4. The matter significantly affects persons or organizations who are not parties to the proceeding;

5. A full public record of the proceeding is important, and a mediation or dispute resolution proceeding cannot provide such a record; and

6. The Board must maintain continuing jurisdiction over the matter with the authority to alter the disposition of the matter in light of changed circumstances, and a mediation or dispute resolution proceeding would interfere with the Board's fulfilling that requirement.

Mediation and alternative dispute resolution as authorized by this section are voluntary procedures which supplement rather than limit other dispute resolution techniques available to the Boards. Mediation or a dispute resolution proceeding may be employed in the issuance of a permit only with the consent and participation of the permit applicant and shall be terminated at the request of the permit applicant.

B. The decision to employ mediation or a dispute resolution proceeding is in a Board's sole discretion and is not subject to judicial review.

C. The outcome of any mediation or dispute resolution proceeding shall not be binding upon a Board, but may be considered by a Board in issuing a permit or promulgating a regulation.

D. Each Board shall adopt rules and regulations, in accordance with the Administrative Process Act, for the implementation of this section. Such rules and regulations shall include: (i) standards and procedures for the conduct of mediation and dispute resolution, including an opportunity for interested persons identified by the Board to participate in the proceeding; (ii) the appointment and function of a neutral, as defined in § 8.01-576.4, to encourage and assist parties to voluntarily compromise or settle contested issues; and (iii) procedures to protect the confidentiality of papers, work product or other materials.

E. The provisions of § 8.01-576.10 concerning the confidentiality of a mediation or dispute resolution proceeding shall govern all such proceedings held pursuant to this section except where a Board

uses or relies on information obtained in the course of such proceeding in issuing a permit or promulgating a regulation.

Nothing in this section shall create or alter any right, action or cause of action, or be interpreted or applied in a manner inconsistent with the Administrative Process Act (§ 2.2-4000 et seq.), with applicable federal law or with any applicable requirement for the Commonwealth to obtain or maintain federal delegation or approval of any regulatory program.

1997, cc. 645, 667.

§ 10.1-1186.4. Enforcement powers; federal court.

In addition to the authority of the State Air Pollution Control Board, the State Water Control Board, the Virginia Waste Management Board and the Director to bring actions in the courts of the Commonwealth to enforce any law, regulation, case decision or condition of a permit or certification, the Attorney General is hereby authorized on behalf of such boards or the Director to seek to intervene pursuant to Rule 24 of the Federal Rules of Civil Procedure in any action then pending in a federal court in order to resolve a dispute already being litigated in that court by the United States through the Environmental Protection Agency.

2001, cc. 166, 174.

§ 10.1-1186.5. Expired.

Expired.

§ 10.1-1186.6. Carbon market participation; submerged aquatic vegetation.

The Department may participate in any carbon market for which submerged aquatic vegetation restoration qualifies as an activity that generates carbon offset credits. Any revenue resulting from the sale of such credits shall be used to implement additional submerged aquatic vegetation monitoring and research or to cover any administrative costs of participation in the credit market. The Department may enter into agreements necessary to effect such participation, including with private entities for assistance with registration and sale of offset credits. The Department shall hold exclusive title to such credits until sold.

2020, c. 810.

§ 10.1-1187. Provision of the Code continued.

The conditions, requirements, provisions, contents, powers and duties of any section, article, or chapter of the Code in effect on March 31, 1993, relating to agencies consolidated in this chapter shall apply to the Department of Environmental Quality until superseded by new legislation.

1992, c. 887.

Article 1.1 - VIRGINIA ENVIRONMENTAL EXCELLENCE PROGRAM

§ 10.1-1187.1. Definitions.

"Board or Boards" means the State Air Pollution Control Board, the State Water Control Board, and the Virginia Waste Management Board.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Environmental Management System" means a comprehensive, cohesive set of documented policies and procedures adopted by a facility or person and used to establish environmental goals, to meet and maintain those goals, to evaluate environmental performance and to achieve measurable or noticeable improvements in environmental performance, through planning, documented management and operational practices, operational changes, self assessments, and management review. The term shall include, but not be limited to, any such system developed in accordance with the International Standards of Operation 14001 standards.

"E2" means an environmental enterprise.

"E3" means an exemplary environmental enterprise.

"E4" means an extraordinary environmental enterprise.

"Facility" means a manufacturing, business, agricultural, or governmental site or installation involving one or more contiguous buildings or structures under common ownership or management.

"Record of sustained compliance" means that the person or facility (i) has no judgment or conviction entered against it, or against any key personnel of the person or facility or any person with an ownership interest in the facility for a criminal violation of environmental protection laws of the United States, the Commonwealth, or any other state in the previous five years; (ii) has been neither the cause of, nor liable for, more than two significant environmental violations in the previous three years; (iii) has no unresolved notices of violations or potential violations of environmental requirements with the Department or one of the Boards; (iv) is in compliance with the terms of any order or decree, executive compliance agreement, or related enforcement measure issued by the Department, one of the Boards, or the U.S. Environmental Protection Agency; and (v) has not demonstrated in any other way an unwillingness or inability to comply with environmental protection requirements.

2005, c. 705.

§ 10.1-1187.2. Virginia Environmental Excellence Program established.

The Department may establish programs to recognize facilities and persons that have demonstrated a commitment to enhanced environmental performance and to encourage innovations in environmental protection.

2005, c. 705.

§ 10.1-1187.3. Program categories and criteria.

A. The Director shall establish different categories of participation and the criteria and benefits for each category. Such categories shall include, but not be limited to: (i) E2 facilities, (ii) E3 facilities, and (iii) E4 facilities.

B. In order to participate as an E2 facility, a person or facility shall demonstrate that it (i) is developing an environmental management system or has initiated implementation of an environmental management system, (ii) has a commitment to pollution prevention and a plan to reduce environmental impacts from its operations, and (iii) has a record of sustained compliance with environmental requirements. To apply to become an E2 facility, an applicant shall submit the following information to the Department: (a) a policy statement outlining the applicant's commitment to improving environmental quality, (b) an evaluation of the applicant's environmental impacts, (c) the applicant's objectives and targets for addressing significant environmental impacts, and (d) a description of the applicant's pollution prevention program. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E2 facilities may include, but are not limited to, the following: public recognition of facility performance and reduced fees.

C. In order to participate as an E3 facility, a person or facility shall demonstrate that it has (i) a fully-implemented environmental management system, (ii) a pollution prevention program with documented results, and (iii) a record of sustained compliance with environmental requirements. To apply to become an E3 facility, an applicant shall submit the following information to the Department: (a) a policy statement outlining the applicant's commitment to improving environmental quality; (b) an evaluation of the applicant's actual and potential environmental impacts; (c) the applicant's objectives and targets for addressing significant environmental impacts; (d) a description of the applicant's pollution prevention program; (e) identification of the applicant's environmental legal requirements; (f) a description of the applicant's environmental management system that identifies roles, responsibilities and authorities, reporting and record-keeping, emergency response procedures, staff training, monitoring, and corrective action processes for noncompliance with the environmental management system; (g) voluntary self-assessments; and (h) procedures for internal and external communications. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E3 facilities may include, but are not limited to, the following: public recognition of facility performance, reduced fees, reduced inspection priority, a single point-of-contact between the facility and the Department, streamlined environmental reporting, reduced monitoring requirements, prioritized permit and permit amendment review, and the ability to implement alternative compliance measures approved by the appropriate Board in accordance with § 10.1-1187.6.

D. In order to participate as an E4 facility, a person or facility shall meet the criteria for participation as an E3 facility, and shall have (i) implemented and completed at least one full cycle of an environmental management system as verified by an unrelated third-party qualified to audit environmental management systems and (ii) committed to measures for continuous and sustainable environmental

progress and community involvement. To apply to become an E4 facility, an applicant shall submit (a) the information required to apply to become an E3 facility, (b) documentation evidencing implementation and completion of at least one full cycle of an environmental management system and evidencing review and verification by an unrelated third party, and (c) documentation that the applicant has committed to measures for continuous and sustainable environmental progress and community involvement. A person or facility may participate in this program for up to three years, and may apply to renew its participation at the expiration of each three-year period. Incentives for E4 facilities may include all of the incentives available to E3 facilities. Any facility or person that has been accepted into the National Performance Track Programs by the U.S. Environmental Protection Agency shall be deemed to be an E4 facility. If acceptance in the Program is revoked or suspended by the U.S. Environmental Protection Agency, participation as an E4 facility shall also be terminated or suspended.

2005, c. 705.

§ 10.1-1187.4. Procedures for participation.

A. The Director shall develop guidelines and procedures for implementation of the program, including procedures for submitting applications, guidelines for annual reports from participating persons or facilities, and procedures for reviewing program implementation.

B. Upon review of an application, the Director may approve or deny the person's or facility's participation in the appropriate category within the Virginia Environmental Excellence Program. The denial of a person's or facility's participation in the Virginia Environmental Excellence Program shall not be with prejudice or otherwise prevent reapplication by the person or facility. If a participant fails to maintain a record of sustained compliance, fails to resolve an alleged environmental violation within 180 days, or fails to meet the requirements or criteria for participation in the Virginia Environmental Excellence Program or any category within the program, the Director may revoke or suspend their participation in the program or revoke participation in a higher level and approve its participation in a lower level of the program. The Director shall provide reasonable notice of the reasons for the suspension or revocation and allow the participant to respond prior to making such a decision.

C. The Director's decision to approve, deny, revoke, or suspend a person's or facility's participation in any category of the Virginia Environmental Excellence Program is discretionary, shall not be a case decision as defined in § 2.2-4001, and shall be exempt from judicial review.

2005, c. 705.

§ 10.1-1187.5. Reporting.

A. Participants shall submit annual reports in a format and schedule prescribed by the Director, including information on environmental performance relevant to the program.

B. The Department shall submit a report to the Governor and to the members of the House Committee on Agriculture, Chesapeake and Natural Resources and the members of the Senate Committee on Agriculture, Conservation and Natural Resources by December 1 of every even-numbered year, with the last report due on December 1, 2010. The report shall include the information from the participants'

reports as well as information on the incentives that have been provided and the innovations that have been developed by the agency and participants.

2005, c. 705.

§ 10.1-1187.6. Approval of alternate compliance methods.

A. To the extent consistent with federal law and notwithstanding any other provision of law, the Air Pollution Control Board, the Waste Management Board, and the State Water Control Board may grant alternative compliance methods to the regulations adopted pursuant to their authorities, respectively, under §§ 10.1-1308, 10.1-1402, and 62.1-44.15 for persons or facilities that have been accepted by the Department as meeting the criteria for E3 and E4 facilities under § 10.1-1187.3, including but not limited to changes to monitoring and reporting requirements and schedules, streamlined submission requirements for permit renewals, the ability to make certain operational changes without prior approval, and other changes that would not increase a facility's impact on the environment. Such alternative compliance methods may allow alternative methods for achieving compliance with prescribed regulatory standards, provided that the person or facility requesting the alternative compliance method demonstrates that the method will (i) meet the purpose of the applicable regulatory standard, (ii) promote achievement of those purposes through increased reliability, efficiency, or cost effectiveness, and (iii) afford environmental protection equal to or greater than that provided by the applicable regulatory standard. No alternative compliance method shall be approved that would alter an ambient air quality standard, ground water protection standard, or water quality standard and no alternative compliance method shall be approved that would increase the pollutants released to the environment, increase impacts to state waters, or otherwise result in a loss of wetland acreage.

B. Notwithstanding any other provision of law, an alternate compliance method may be approved under this section after at least 30 days' public notice and opportunity for comment, and a determination that the alternative compliance method meets the requirements of this section.

C. Nothing in this section shall be interpreted or applied in a manner inconsistent with the applicable federal law or other requirement necessary for the Commonwealth to obtain or retain federal delegation or approval of any regulatory program. Before approving an alternate compliance method affecting any such program, each Board may obtain the approval of the federal agency responsible for such delegation or approval. Any one of the Boards may withdraw approval of the alternate compliance method at any time if any conditions under which the alternate compliance method was originally approved change, or if the recipient has failed to comply with any of the alternative compliance method requirements.

D. Upon approval of the alternative compliance method under this section, the alternative compliance method shall be incorporated into the relevant permits as a minor permit modification with no associated fee. The permits shall also contain any such provisions that shall go into effect in the event that the participant fails to fulfill its obligations under the variance, or is removed from the program for reasons specified by the Director under subsection B of § 10.1-1187.4.

2005, c. 705.

§ 10.1-1187.7. Governor's Environmental Excellence Awards.

The Governor's Environmental Excellence Awards shall be awarded each year to recognize participants in the Virginia Environmental Excellence Program that have demonstrated extraordinary leadership, innovation, and commitment to implementation of pollution prevention practices and other efforts to reduce environmental impacts and improve Virginia's natural environment.

2005, c. 705.

Article 2 - ENVIRONMENTAL IMPACT REPORTS OF STATE AGENCIES

§ 10.1-1188. State agencies to submit environmental impact reports on major projects.

A. All state agencies, boards, authorities and commissions or any branch of the state government shall prepare and submit an environmental impact report to the Department on each major state project.

"Major state project" means the acquisition of an interest in land for any state facility construction, or the construction of any facility or expansion of an existing facility which is hereafter undertaken by any state agency, board, commission, authority or any branch of state government, including public institutions of higher education, which costs $500,000 or more. For the purposes of this chapter, authority shall not include any industrial development authority created pursuant to the provisions of Chapter 49 (§ 15.2-4900 et seq.) of Title 15.2 or Chapter 643, as amended, of the 1964 Acts of Assembly. Nor shall it include the Virginia Port Authority created pursuant to the provisions of § 62.1-128, unless such project is a capital project that costs in excess of $5 million. Nor shall authority include any housing development or redevelopment authority established pursuant to state law. For the purposes of this chapter, branch of state government shall include any county, city or town of the Commonwealth only in connection with highway construction, reconstruction, or improvement projects affecting highways or roads undertaken by the county, city, or town on projects estimated to cost more than $2 million. For projects undertaken by any locality costing more than $500,000 and less than $2 million, the locality shall consult with the Department of Historic Resources to consider and make reasonable efforts to avoid or minimize impacts to historic resources if the project involves a new location or a new disturbance that extends outside the area or depth of a prior disturbance, or otherwise has the potential to affect such resources adversely.

Such environmental impact report shall include, but not be limited to, the following:

1. The environmental impact of the major state project, including the impact on wildlife habitat;

2. Any adverse environmental effects which cannot be avoided if the major state project is undertaken;

3. Measures proposed to minimize the impact of the major state project;

4. Any alternatives to the proposed construction; and

5. Any irreversible environmental changes which would be involved in the major state project.

For the purposes of subdivision 4, the report shall contain all alternatives considered and the reasons why the alternatives were rejected. If a report does not set forth alternatives, it shall state why alternatives were not considered.

B. For purposes of this chapter, this subsection shall only apply to the review of highway and road construction projects or any part thereof. The Secretaries of Transportation and Natural Resources shall jointly establish procedures for review and comment by state natural and historic resource agencies of highway and road construction projects. Such procedures shall provide for review and comment on appropriate projects and categories of projects to address the environmental impact of the project, any adverse environmental effects which cannot be avoided if the project is undertaken, the measures proposed to minimize the impact of the project, any alternatives to the proposed construction, and any irreversible environmental changes which would be involved in the project.

1973, c. 384, § 10-17.108; 1974, c. 270, § 10.1-1208; 1977, c. 667; 1988, c. 891; 1991, c. 289; 1992, c. 887; 1997, c. 268; 2007, c. 896; 2008, cc. 45, 225, 473; 2012, cc. 846, 849; 2013, c. 758.

§ 10.1-1188.1. Department of Transportation to consider wildlife corridors.

The Department of Transportation (VDOT) shall, as part of the environmental review it conducts for a road or highway construction project, include in an environmental impact statement a list of any existing terrestrial or aquatic wildlife corridor identified in the Wildlife Corridor Action Plan (the Plan) created pursuant to Article 8 (§ 29.1-578 et seq.) of Chapter 5 of Title 29.1 that will be affected by such construction project. In the design options for any road or highway construction project that threatens wildlife connectivity in a corridor identified in the Plan, VDOT shall consider measures for the mitigation of harm caused by such road to terrestrial and aquatic wildlife.

2020, cc. 323, 672.

§ 10.1-1189. Department to review report and make statement to Governor.

Within sixty days of the receipt of the environmental impact report by the Department, the Department shall review and make a statement to the Governor commenting on the environmental impact of each major state facility. The statement of the Department shall be available to the General Assembly and to the general public at the time of submission by the Department to the Governor.

1973, c. 384, § 10-17.109; 1974, c. 270, § 10.1-1209; 1977, c. 667; 1988, c. 891; 1992, c. 887.

§ 10.1-1190. Approval of Governor required for construction of facility.

The State Comptroller shall not authorize payments of funds from the state treasury for a major state project unless the request is accompanied by the written approval of the Governor after his consideration of the comments of the Department on the environmental impact of the facility. This section shall not apply to funds appropriated by the General Assembly prior to June 1, 1973, or any reappropriation of such funds.

1973, c. 384, § 10-17.110; 1974, c. 270, § 10.1-1210; 1977, c. 667; 1988, c. 891; 1991, c. 289; 1992, c. 887.

§ 10.1-1191. Development of procedures, etc., for administration of chapter.

The Department shall, in conjunction with other state agencies, coordinate the development of objectives, criteria and procedures to ensure the orderly preparation and evaluation of environmental impact reports required by this article. These procedures shall provide for submission of impact statements in sufficient time to permit any modification of the major state project which may be necessitated because of environmental impact.

1973, c. 384, § 10-17.111; 1974, c. 270, § 10.1-1211; 1977, c. 667; 1988, c. 891; 1992, c. 887.

§ 10.1-1192. Cooperation of state agencies.

All departments, commissions, boards, authorities, agencies, offices and institutions within any branch of the state government shall cooperate with the Department in carrying out the purposes of this article.

1973, c. 384, § 10-17.112; 1974, c. 270, § 10.1-1212; 1977, c. 667; 1988, c. 891; 1992, c. 887.

Article 3 - WATERSHED PLANNING AND PERMITTING PROMOTION AND COORDINATION

§ 10.1-1193. Watershed planning; watershed permitting; promotion and coordination.

A. The Department, with the assistance of the Watershed Planning and Permitting Coordination Task Force, shall undertake such efforts it deems necessary and appropriate to coordinate the watershed-level activities conducted by state and local agencies and authorities and to foster the development of watershed planning by localities. To aid in the coordination and promotion of these activities, the Department shall to the extent practicable in its discretion:

1. Promote and coordinate state and local agencies' and authorities' efforts to undertake watershed planning and watershed permitting;

2. Acquire, maintain and make available informational resources on watershed planning;

3. Promote the continuation of research and dialogue on what is entailed in watershed planning and watershed permitting;

4. Identify sources and methods for providing local officials with technical assistance in watershed planning;

5. Encourage and foster training of local officials in watershed planning;

6. Develop recommendations for needed regulatory and legislative changes to assist local governments in developing and implementing watershed planning;

7. Identify barriers to watershed planning and watershed permitting, including state policies, regulations and procedures, and recommend alternatives to overcome such obstacles; and

8. Develop, foster and coordinate approaches to watershed permitting.

B. The Department shall report annually its watershed planning and permitting activities, findings and recommendations and those of the Task Force to the Governor and the General Assembly. This annual report may be incorporated as part of the report required by § 62.1-44.118.

C. Nothing in this article shall be construed as requiring additional permitting or planning requirements on agricultural or forestal activities.

1995, c. 793; 2007, c. 637.

§ 10.1-1194. Watershed Planning and Permitting Coordination Task Force created; membership; duties.

A. There is hereby created the Watershed Planning and Permitting Coordination Task Force, which shall be referred to in this article as the Task Force. The Task Force shall be composed of the Directors, or their designees, of the Department of Environmental Quality, the Department of Conservation and Recreation, the Department of Forestry, the Department of Mines, Minerals and Energy, and the Commissioner, or his designee, of the Department of Agriculture and Consumer Services.

B. The Task Force shall meet at least quarterly on such dates and times as the members determine. A majority of the Task Force shall constitute a quorum.

C. The Task Force shall undertake such measures and activities it deems necessary and appropriate to see that the functions of the agencies represented therein, and to the extent practicable of other agencies of the Commonwealth, and the efforts of state and local agencies and authorities in watershed planning and watershed permitting are coordinated and promoted.

1995, c. 793; 2005, c. 41.

§ 10.1-1195. Watershed planning and permitting advisory panels.

The Task Force may name qualified persons to advisory panels to assist it in carrying out its responsibilities. Panels shall include members representing different areas of interest and expertise in watershed planning and watershed permitting including representatives of local governments, planning district commissions, industry, development interests, education, environmental and public interest groups and the scientific community found in baccalaureate institutions of higher education in the Commonwealth.

1995, c. 793.

§ 10.1-1196. Guiding definition and principles.

A. The Department, the Task Force and any advisory panels appointed by the Task Force shall be guided by the following definition of watershed planning: "Watershed planning" is the process of studying the environmental and land use features of a watershed to identify those areas that should be protected and preserved, measures to be utilized to protect such areas, and the character of development in order to avoid and minimize disruption of natural systems. Its focus is not on directing development to particular parcels of land but rather to identify critical resources, and measures to protect those resources, so that development, when it does occur, will not negatively impact water resources. In so

doing watershed planning uses and protects ecological processes to lessen the need for structural control methods that require capital costs and maintenance. By including consideration of a watershed and its characteristics, cumulative impacts and interjurisdictional issues are more effectively managed than when solely relying on single-site-permit approaches. Watershed planning can be an important tool for maintaining environmental integrity, economic development and watershed permitting.

B. The Department, the Task Force and any advisory panels appointed by the Task Force shall be guided by the principles contained in the following statement: Stream systems tend to reflect the character of the watershed they drain. Unchecked physical conversion in a watershed accompanying urbanization leads to degraded streams and wetlands. As urbanization continues to spread across the state, natural vegetation, slope and water retention characteristics are replaced by impervious surfaces disrupting the dynamic balance of the natural hydrologic cycle. Poorly planned development can increase peak storm flows and runoff volume, lower water quality and aesthetics, and cause flooding and degradation of downstream communities and ecosystems.

1995, c. 793.

§ 10.1-1197. Cooperation of state agencies.

All agencies of the Commonwealth shall cooperate with the Department and the Task Force and, upon request, assist the Department and the Task Force in the performance of their efforts in coordinating and promoting watershed planning and watershed permitting.

1995, c. 793.

Article 4 - SMALL BUSINESS ENVIRONMENTAL COMPLIANCE ASSISTANCE FUND

§ 10.1-1197.1. Definitions.

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

"Fund" means the Small Business Environmental Compliance Assistance Fund.

"Small business" means a business located in Virginia that (i) employs 100 or fewer people and (ii) is a small business concern as defined in the federal Small Business Act (15 U.S.C. § 631 et seq.) as amended.

"Voluntary pollution prevention measures" means operational or equipment changes that meet the definition of pollution prevention contained in § 10.1-1425.10 and are not otherwise required by law.

1997, cc. 624, 850.

§ 10.1-1197.2. Small Business Environmental Compliance Assistance Fund established; administration; collection of money.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Small Business Environmental Compliance Assistance Fund, hereafter referred to as the "Fund." The Fund

shall be comprised of (i) moneys appropriated to the Fund by the General Assembly, (ii) receipts by the Fund from loans made by it, (iii) all income from the investment of moneys held by the Fund, (iv) any moneys transferred from the Virginia Environmental Emergency Response Fund as authorized by § 10.1-2502, and (v) 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 solely for the purposes provided in this article. Any moneys appropriated or otherwise credited to the Fund that were received by the Department pursuant to Title V (42 U.S.C. § 7661 et seq.) of the federal Clean Air Act shall be used solely for purposes associated with Title V of the federal Clean Air Act. 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. The Fund shall be administered and managed by the Department, or any entity operating under a contract or agreement with the Department.

B. The Department, or its designated agent, is empowered to collect moneys due to the Fund. Proceedings to recover moneys due to the Fund may be instituted in the name of the Fund in any appropriate circuit court.

1997, cc. 624, 850.

§ 10.1-1197.3. Purposes of Fund; loans to small businesses; administrative costs.

A. Moneys in the Fund shall be used to make loans or to guarantee loans to small businesses for the purchase and installation of environmental pollution control and prevention equipment certified by the Department as meeting the following requirements:

1. The air pollution control equipment is needed by the small business to comply with the federal Clean Air Act (42 U.S.C. § 7401 et seq.); or

2. The pollution control equipment will allow the small business to implement voluntary pollution prevention measures.

Moneys in the Fund may also be used to make loans or to guarantee loans to small businesses for the installation of voluntary agricultural best management practices, as defined in § 58.1-339.3.

B. The Department or its designated agent shall determine the terms and conditions of any loan. All loans shall be evidenced by appropriate security as determined by the Department or its designated agent. The Department, or its agent, may require any documents, instruments, certificates, or other information deemed necessary or convenient in connection with any loan from the Fund.

C. A portion of the Fund balance may be used to cover the reasonable and necessary costs of administering the Fund. Unless otherwise authorized by the Governor or his designee, the costs of administering the Fund shall not exceed a base year amount of $65,000 per year, using fiscal year 2000 as the base year, adjusted annually by the Consumer Price Index.

D. The Fund shall not be used to make loans to small businesses for the purchase and installation of equipment needed to comply with an enforcement action by the Department, the State Air Pollution Control Board, the State Water Control Board, or the Virginia Waste Management Board.

1997, cc. 624, 850; 1999, c. 893; 2000, c. 131.

§ 10.1-1197.4. Annual audit.

The Auditor of Public Accounts shall annually audit the accounts of the Fund when the records of the Department are audited.

1997, cc. 624, 850.

Article 5 - SMALL RENEWABLE ENERGY PROJECTS

§ 10.1-1197.5. Definitions.

As used in this article, "small renewable energy project" means (i) an electrical generation facility with a rated capacity not exceeding 150 megawatts that generates electricity only from sunlight or wind; (ii) an electrical generation facility with a rated capacity not exceeding 100 megawatts that generates electricity only from falling water, wave motion, tides, or geothermal power; or (iii) an electrical generation facility with a rated capacity not exceeding 20 megawatts that generates electricity only from biomass, energy from waste, or municipal solid waste.

2009, cc. 808, 854; 2017, c. 368.

§ 10.1-1197.6. Permit by rule for small renewable energy projects.

A. Notwithstanding the provisions of § 10.1-1186.2:1, the Department shall develop, by regulations to be effective as soon as practicable, but not later than July 1, 2012, a permit by rule or permits by rule if it is determined by the Department that one or more such permits by rule are necessary for the construction and operation of small renewable energy projects, including such conditions and standards necessary to protect the Commonwealth's natural resources. If the Department determines that more than a single permit by rule is necessary, the Department initially shall develop the permit by rule for wind energy, which shall be effective as soon as practicable, but not later than January 1, 2011. Subsequent permits by rule regulations shall be effective as soon as practicable.

B. The conditions for issuance of the permit by rule for small renewable energy projects shall include:

1. A notice of intent provided by the applicant, to be published in the Virginia Register, that a person intends to submit the necessary documentation for a permit by rule for a small renewable energy project;

2. A certification by the governing body of the locality or localities wherein the small renewable energy project will be located that the project complies with all applicable land use ordinances;

3. Copies of all interconnection studies undertaken by the regional transmission organization or transmission owner, or both, on behalf of the small renewable energy project;

4. A copy of the final interconnection agreement between the small renewable energy project and the regional transmission organization or transmission owner indicating that the connection of the small renewable energy project will not cause a reliability problem for the system. If the final agreement is not available, the most recent interconnection study shall be sufficient for the purposes of this section. When a final interconnection agreement is complete, it shall be provided to the Department. The Department shall forward a copy of the agreement or study to the State Corporation Commission;

5. A certification signed by a professional engineer licensed in Virginia that the maximum generation capacity of the small renewable energy project by (i) an electrical generation facility that generates electricity only from sunlight or wind as designed does not exceed 150 megawatts; (ii) an electrical generation facility that generates electricity only from falling water, wave motion, tides, or geothermal power as designed does not exceed 100 megawatts; or (iii) an electrical generation facility that generates electricity only from biomass, energy from waste, or municipal solid waste as designed does not exceed 20 megawatts;

6. An analysis of potential environmental impacts of the small renewable energy project's operations on attainment of national ambient air quality standards;

7. Where relevant, an analysis of the beneficial and adverse impacts of the proposed project on natural resources. For wildlife, that analysis shall be based on information on the presence, activity, and migratory behavior of wildlife to be collected at the site for a period of time dictated by the site conditions and biology of the wildlife being studied, not exceeding 12 months;

8. If the Department determines that the information collected pursuant to subdivision B 7 indicates that significant adverse impacts to wildlife or historic resources are likely, the submission of a mitigation plan detailing reasonable actions to be taken by the owner or operator to avoid, minimize, or otherwise mitigate such impacts, and to measure the efficacy of those actions;

9. A certification signed by a professional engineer licensed in Virginia that the small renewable energy project is designed in accordance with all of the standards that are established in the regulations applicable to the permit by rule;

10. An operating plan describing how any standards established in the regulations applicable to the permit by rule will be achieved;

11. A detailed site plan with project location maps that show the location of all components of the small renewable energy project, including any towers. Changes to the site plan that occur after the applicant has submitted an application shall be allowed by the Department without restarting the application process, if the changes were the result of optimizing technical, environmental, and cost considerations, do not materially alter the environmental effects caused by the facility, or do not alter any other environmental permits that the Commonwealth requires the applicant to obtain;

12. A certification signed by the applicant that the small renewable energy project has applied for or obtained all necessary environmental permits;

13. A requirement that the applicant hold a public meeting. The public meeting shall be held in the locality or, if the project is located in more than one locality in a place proximate to the location of the proposed project. Following the public meeting, the applicant shall prepare a report summarizing the issues raised at the meeting, including any written comments received. The report shall be provided to the Department; and

14. A 30-day public review and comment period prior to authorization of the project.

C. The Department's regulations shall establish a schedule of fees, to be payable by the owner or operator of the small renewable energy project regulated under this article, which fees shall be assessed for the purpose of funding the costs of administering and enforcing the provisions of this article associated with such operations including, but not limited to, the inspection and monitoring of such projects to ensure compliance with this article.

D. The owner or operator of a small renewable energy project regulated under this article shall be assessed a permit fee in accordance with the criteria set forth in the Department's regulations. Such fees shall include an additional amount to cover the Department's costs of inspecting such projects.

E. The fees collected pursuant to this article shall be used only for the purposes specified in this article and for funding purposes authorized by this article to abate impairments or impacts on the Commonwealth's natural resources directly caused by small renewable energy projects.

F. There is hereby established a special, nonreverting fund in the state treasury to be known as the Small Renewable Energy Project Fee Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § 2.2-1802, all moneys collected pursuant to this § 10.1-1197.6 shall be paid into the state treasury to the credit of the Fund. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it. The Fund shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

G. After the effective date of regulations adopted pursuant to this section, no person shall erect, construct, materially modify or operate a small renewable energy project except in accordance with this article or Title 56 if the small renewable energy project was approved pursuant to Title 56.

H. Any small renewable energy project shall be eligible for permit by rule under this section if the project is proposed, developed, constructed, or purchased by a person that is not a utility regulated pursuant to Title 56.

I. Any small renewable energy project commencing operations after July 1, 2017, shall be eligible for permits by rule under this section and is exempt from State Corporation Commission environmental review or permitting in accordance with subsection B of § 10.1-1197.8 or other applicable law if the project is proposed, developed, constructed, or purchased by:

1. A public utility if the project's costs are not recovered from Virginia jurisdictional customers under base rates, a fuel factor charge under § 56-249.6, or a rate adjustment clause under subdivision A 6 of § 56-585.1; or

2. A utility aggregation cooperative formed under Article 2 (§ 56-231.38 et seq.) of Chapter 9.1 of Title 56.

2009, cc. 808, 854; 2017, c. 368.

§ 10.1-1197.7. Review and authorization of projects.

A. Upon submission of a complete application, the Department, after consultation with other agencies in the Secretariat of Natural Resources before authorizing the project, shall conduct an assessment of whether the application meets the requirements of the applicable permit by rule regulations. If the Department determines that the application is deficient, it promptly shall notify the applicant in writing and specify the deficiencies.

B. Any interested party, including an applicant for a permit, who has participated in a proceeding for a permit to construct or operate a small renewable energy project under procedures adopted by the Department pursuant to this section, and who is aggrieved by the final decision of the Department, shall have the remedies provided by the Administrative Process Act (§ 2.2-4000 et seq.).

2009, cc. 808, 854.

§ 10.1-1197.8. Limitation of State Corporation Commission authority.

A. If the owner or operator of a small renewable energy project to whom the Department has authorized a permit by rule pursuant to this article is not a utility regulated pursuant to Title 56, then the State Corporation Commission shall not have jurisdiction to review the small renewable energy project or to condition the construction or operation of a small renewable energy project upon the State Corporation Commission's issuance of any permit or certificate under any provision of Title 56, provided that the State Corporation Commission shall retain jurisdiction to resolve requests for joint use of the rights of way of public service corporations pursuant to § 56-259 and denials of requests for interconnection of facilities pursuant to § 56-578.

B. If the owner or operator of a small renewable energy project for which the Department has authorized a permit by rule pursuant to this article is a utility regulated pursuant to Title 56, such small renewable energy project shall be exempt from any provision of § 56-46.1 and any corresponding provision of subsection D of § 56-580 or Chapter 10.1 (§ 56-265.1 et seq.) of Title 56 that requires environmental review and permitting by the State Corporation Commission. An owner or operator of a small renewable energy project that is granted a permit by rule pursuant to subsection I of § 10.1-1197.6, shall not be required to obtain a certificate of public convenience and necessity pursuant to subsection D of § 56-580 or the Utility Facilities Act (§ 56-265.1 et seq.). Nothing in this section shall affect the jurisdiction of the State Corporation Commission regarding a utility that is not eligible for a permit by rule, or the requirement of such utility to obtain a certificate of public convenience and necessity.

2009, cc. 808, 854; 2017, c. 368.

§ 10.1-1197.9. Enforcement; civil penalties; criminal penalties; injunctive relief.

A. Any person violating or failing, neglecting, or refusing to obey any provision of this article, any regulation, case decision, or order, or any certification or permit-by-rule condition may be compelled to comply by injunction, mandamus, or other appropriate remedy.

B. Without limiting the remedies that may be obtained under subsection A, any person violating or failing, neglecting, or refusing to obey any regulation, case decision, or order, any provision of this article, or any certification or permit-by-rule condition shall be subject, in the discretion of the court, to a civil penalty not to exceed $32,500 for each violation. Each day of violation shall constitute a separate offense. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.). Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city, or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the person in violation is the county, city, or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25.

C. 1. Nothing in this article shall affect the enforcement authorities in laws administered by the State Air Pollution Control Board, the State Water Control Board, or the Virginia Waste Management Board, nor shall it affect enforcement authorities of the Department as described in § 10.1-1186.

2. The Department is authorized to issue orders to require any person to comply with the provisions of this article, any condition of a permit by rule or certification, or any regulations promulgated by the Department or to comply with any order or case decision, as defined in § 2.2-4001, of the Department. Any such order shall be issued only after a proceeding or hearing in accordance with § 2.2-4019 or 2.2-4020 with reasonable notice to the affected person of the time, place and purpose thereof. The provisions of this section shall not affect the authority of the Department to issue separate orders and regulations to meet any emergency as described in subsection C 5.

3. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Department, any condition of a permit by rule, certification or any provision of this article, the Department may provide, in an order issued by the Department against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in this section. Such civil charges shall be levied instead of any appropriate civil penalty, which could be imposed under this section. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

4. In addition to all other available remedies, the Department may issue administrative orders for the violation of (i) any law or regulation administered by the Department; (ii) any condition of a permit by

rule or certificate issued pursuant to this article; or (iii) any case decision or order of the Department. Issuance of an administrative order shall be a case decision as defined in § 2.2-4001 and shall be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020. Orders issued pursuant to this subsection may include civil penalties of up to $32,500 per violation not to exceed $100,000 per order, and may compel the taking of corrective actions or the cessation of any activity upon which the order is based. The Department may assess penalties under this subsection if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Department or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with this subsection. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Department shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Orders issued pursuant to this subsection shall become effective five days after having been delivered to the affected persons or mailed by certified mail to the last known address of such persons. The Department shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

5. Should the Department find that any person is grossly affecting the public health, safety or welfare, or the health of animals, fish or aquatic life or the environment, or such effects are imminent, the Department shall issue, without a hearing, an emergency administrative order directing the person to cease the activity immediately and undertake any needed corrective action, and shall within 10 days hold a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel the emergency administrative order. If the Department finds that a person who has been issued an administrative order or an emergency administrative order is not complying with the order's terms, the Department may utilize the enforcement and penalty provisions of this article to secure compliance.

6. The Department shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the Department under this article in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

D. Any person willfully violating or refusing, failing, or neglecting to comply with any provision of this article or any regulation, permit by rule, order, or certification under this article shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

E. In addition to the penalties provided above, any person who knowingly violates or refuses, fails, or neglects to comply with any provision of this article or any regulation, permit by rule, order, or certification under this article shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than five years and a fine of not more than $32,500 for each violation, either or both. The provisions of this subsection shall be deemed to constitute a lesser included offense of the violation set forth under subsection F.

F. Any person who knowingly violates or refuses, fails, or neglects to comply with any provision of this article or any regulation, permit by rule, order, or certification under this article and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than $250,000, either or both. A defendant that is not an individual shall, upon conviction of violating this section, be subject to a fine not exceeding the greater of $1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person.

G. Criminal prosecutions under this article shall be commenced within three years after discovery of the offense, notwithstanding the provisions of any other statute.

2009, cc. 808, 854.

§ 10.1-1197.10. Right of entry to inspect, etc.; warrants.

Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Director or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine whether the provisions of any law administered by the Director or the Department, any regulations of the Department, any order of the Department or Director or any conditions in a permit by rule, license or certificate issued by the Director are being complied with. If the Director or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2.

2009, cc. 808, 854.

§ 10.1-1197.11. Information to be furnished to Department.

Except as otherwise specified in this article, the Department may require every owner or operator of a small renewable energy project to furnish when requested such plans, specifications, and other pertinent information as may be necessary to determine the compliance status of the project and the effect of the project on human health or the environment.

2009, cc. 808, 854.

Chapter 11.2 - VOLUNTARY ENVIRONMENTAL ASSESSMENT

§ 10.1-1198. Voluntary environmental assessment privilege.

A. For purposes of this chapter, unless the context requires a different meaning:

"Environmental assessment" means a voluntary evaluation of activities or facilities or of management systems related to such activities or facilities that is designed to identify noncompliance with environmental laws and regulations, promote compliance with environmental laws and regulations, or identify opportunities for improved efficiency or pollution prevention. An environmental assessment may be conducted by the owner or operator of a facility or an independent contractor at the request of the owner or operator.

"Document" means information collected, generated or developed in the course of, or resulting from, an environmental assessment, including but not limited to field notes, records of observation, findings, opinions, suggestions, conclusions, drafts, memoranda, drawings, photographs, videotape, computer-generated or electronically recorded information, maps, charts, graphs and surveys. "Document" does not mean information generated or developed before the commencement of a voluntary environmental assessment showing noncompliance with environmental laws or regulations or demonstrating a clear, imminent and substantial danger to the public health or environment.

B. No person involved in the preparation of or in possession of a document shall be compelled to disclose such document or information about its contents, or the details of its preparation. Such a document, portion of a document or information is not admissible without the written consent of the owner or operator in an administrative or judicial proceeding and need not be produced as a result of an information request of the Department or other agency of the Commonwealth or political subdivision. This privilege does not extend to a document, portion of a document or information that demonstrates a clear, imminent and substantial danger to the public health or the environment or to a document or a portion of a document required by law or prepared independently of the voluntary environmental assessment process. This privilege does not apply to a document or portion of a document collected, generated or developed in bad faith, nor does it alter, limit, waive or abrogate any other statutory or common law privilege.

C. A person or entity asserting a voluntary environmental assessment privilege has the burden of proving a prima facie case as to the privilege. A party seeking disclosure of a document, portion of a document, or information has the burden of proving the applicability of an exception in subsection B to the voluntary environmental assessment privilege. Upon a showing, based upon independent knowledge,

by any party to: (i) an informal fact-finding proceeding held pursuant to § 2.2-4019 at which a hearing officer is present; (ii) a formal hearing pursuant to § 2.2-4020; or (iii) a judicial proceeding that probable cause exists to believe that an exception listed in subsection B to the voluntary environmental assessment privilege is applicable to all or a portion of a document or information, the hearing officer or court may have access to the relevant portion of such document or information for the purposes of an in camera review only to determine whether such exception is applicable. The court or hearing examiner may have access to the relevant portion of a document under such conditions as may be necessary to protect its confidentiality. A moving party who obtains access to the document or information may not divulge any information from the document or other information except as specifically allowed by the hearing examiner or the court.

1995, c. 564.

§ 10.1-1199. Immunity against administrative or civil penalties for voluntarily disclosed violation.
To the extent consistent with requirements imposed by federal law, any person making a voluntary disclosure of information to a state or local regulatory agency regarding a violation of an environmental statute, regulation, permit or administrative order shall be accorded immunity from administrative or civil penalty under such statute, regulation, permit or administrative order. A disclosure is voluntary if (i) it is not otherwise required by law, regulation, permit or administrative order, (ii) it is made promptly after knowledge of the violation is obtained through a voluntary environmental assessment, and (iii) the person making the disclosure corrects the violation in a diligent manner in accordance with a compliance schedule submitted to the appropriate state or local regulatory agencies demonstrating such diligence. Immunity shall not be accorded if it is found that the person making the voluntary disclosure has acted in bad faith. This section does not bar the institution of a civil action claiming compensation for injury to person or property against an owner or operator.

1995, c. 564.

Chapter 12 - ENVIRONMENTAL QUALITY [Repealed]

§§ 10.1-1200 through 10.1-1212. Repealed.
Repealed by Acts 1992, c. 887.

§§ 10.1-1213 through 10.1-1221. Repealed.
Repealed by Acts 1992, cc. 464 and 887.

Chapter 12.1 - BROWNFIELD RESTORATION AND LAND RENEWAL ACT

§ 10.1-1230. Definitions.
As used in this chapter:

"Authority" means the Virginia Resources Authority.

"Bona fide prospective purchaser" means a person or a tenant of a person who acquires ownership, or proposes to acquire ownership, of real property after the release of hazardous substances occurred.

"Brownfield" means real property; the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.

"Cost" as applied to any project financed under the provisions of this chapter, means the reasonable and necessary costs incurred for carrying out all works and undertakings necessary or incident to the accomplishment of any project. It includes, without limitation, all necessary developmental, planning and feasibility studies, surveys, plans and specifications; architectural, engineering, financial, legal or other special services; site assessments, remediation, containment, and demolition or removal of existing structures; the costs of acquisition of land and any buildings and improvements thereon, including the discharge of any obligation of the seller of such land, buildings or improvements; labor; materials, machinery and equipment; the funding of accounts and reserves that the Authority may require; the reasonable costs of financing incurred by the local government in the course of the development of the project; carrying charges incurred prior to completion of the project, and the cost of other items that the Authority determines to be reasonable and necessary.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Fund" means the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund.

"Innocent land owner" means a person who holds any title, security interest or any other interest in a brownfield site and who acquired ownership of the real property after the release of hazardous substances occurred.

"Local government" means any county, city, town, municipal corporation, authority, district, commission, or political subdivision of the Commonwealth created by the General Assembly or otherwise created pursuant to the laws of the Commonwealth or any combination of the foregoing.

"Partnership" means the Virginia Economic Development Partnership.

"Person" means an individual, corporation, partnership, association, governmental body, municipal corporation, public service authority, or any other legal entity.

"Project" means all or any part of the following activities necessary or desirable for the restoration and redevelopment of a brownfield site: (i) environmental or cultural resource site assessments, (ii) monitoring, remediation, cleanup, or containment of property to remove hazardous substances, hazardous wastes, solid wastes or petroleum, (iii) the lawful and necessary removal of human remains, the appropriate treatment of grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv) demolition and removal of existing structures, or other site work necessary to make a site or certain real property usable for economic development, and (v) development of a remediation and reuse plan.

2002, c. 378; 2014, c. 144.

§ 10.1-1231. Brownfield restoration and land renewal policy and programs.

It shall be the policy of the Commonwealth to encourage remediation and restoration of brownfields by removing barriers and providing incentives and assistance whenever possible. The Department of Environmental Quality and the Economic Development Partnership and other appropriate agencies shall establish policies and programs to implement these policies, including a Voluntary Remediation Program, the Brownfields Restoration and Redevelopment Fund, and other measures as may be appropriate.

2002, c. 378.

§ 10.1-1232. Voluntary Remediation Program.

A. The Virginia Waste Management Board shall promulgate regulations to allow persons who own, operate, have a security interest in or enter into a contract for the purchase of contaminated property to voluntarily remediate releases of hazardous substances, hazardous wastes, solid wastes, or petroleum. The regulations shall apply where remediation has not clearly been mandated by the United States Environmental Protection Agency, the Department or a court pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or other applicable statutory or common law or where jurisdiction of those statutes has been waived. The regulations shall provide for the following:

1. The establishment of methodologies to determine site-specific risk-based remediation standards, which shall be no more stringent than applicable or appropriate relevant federal standards for soil, groundwater and sediments, taking into consideration scientific information regarding the following: (i) protection of public health and the environment, (ii) the future industrial, commercial, residential, or other use of the property to be remediated and of surrounding properties, (iii) reasonably available and effective remediation technology and analytical quantitation technology, (iv) the availability of institutional or engineering controls that are protective of human health or the environment, and (v) natural background levels for hazardous constituents;

2. The establishment of procedures that minimize the delay and expense of the remediation, to be followed by a person volunteering to remediate a release and by the Department in processing submissions and overseeing remediation;

3. The issuance of certifications of satisfactory completion of remediation, based on then-present conditions and available information, where voluntary cleanup achieves applicable cleanup standards or where the Department determines that no further action is required;

4. Procedures to waive or expedite issuance of any permits required to initiate and complete a voluntary cleanup consistent with applicable federal law; and

5. Registration fees to be collected from persons conducting voluntary remediation to defray the actual reasonable costs of the voluntary remediation program expended at the site.

B. Persons conducting voluntary remediations pursuant to an agreement with the Department entered into prior to the promulgation of those regulations may elect to complete the cleanup in accordance with such an agreement or the regulations.

C. Certification of satisfactory completion of remediation shall constitute immunity to an enforcement action under the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 13 (§ 10.1-1300 et seq.) of this title, or any other applicable law.

D. At the request of a person who owns, operates, holds a security interest in or contracts for the purchase of property from which the contamination to be voluntarily remediated originates, the Department is authorized to seek temporary access to private and public property not owned by such person conducting the voluntary remediation as may be reasonably necessary for such person to conduct the voluntary remediation. Such request shall include a demonstration that the person requesting access has used reasonable effort to obtain access by agreement with the property owner. Such access, if granted, shall be granted for only the minimum amount of time necessary to complete the remediation and shall be exercised in a manner that minimizes the disruption of ongoing activities and compensates for actual damages. The person requesting access shall reimburse the Commonwealth for reasonable, actual and necessary expenses incurred in seeking or obtaining access. Denial of access to the Department by a property owner creates a rebuttable presumption that such owner waives all rights, claims and causes of action against the person volunteering to perform remediation for costs, losses or damages related to the contamination as to claims for costs, losses or damages arising after the date of such denial of access to the Department. A property owner who has denied access to the Department may rebut the presumption by showing that he had good cause for the denial or that the person requesting that the Department obtain access acted in bad faith.

2002, c. 378; 2014, c. 366.

§ 10.1-1233. Amnesty for voluntary disclosure and restoration of brownfield sites.

The Director may, consistent with programs developed under the federal acts, provide incentives for the voluntary disclosure of brownfield sites and related information regarding potential or known contamination at that site. To the extent consistent with federal law, any person making a voluntary disclosure regarding real or potential contamination at a brownfield site shall not be assessed an administrative or civil penalty under the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), or any other applicable law. A disclosure is voluntary if it is not otherwise required by law, regulation, permit or administrative order and the person making the disclosure adopts a plan to market for redevelopment or otherwise ensure the timely remediation of the site. Immunity shall not be accorded if it is found that the person making the voluntary disclosure has acted in bad faith.

2002, c. 378.

§ 10.1-1234. Limitations on liability.

A. The Director may, consistent with programs developed under the federal acts, make a determination to limit the liability of lenders, innocent purchasers or landowners, de minimis contributors or others who have grounds to claim limited responsibility for a containment or cleanup that may be required pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), the State Air Pollution Control Law (§ 10.1-1300 et seq.), or any other applicable law.

B. A bona fide prospective purchaser shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if (i) the person did not cause, contribute, or consent to the release or threatened release, (ii) the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, (iii) the person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances, and (iv) the person does not impede the performance of any response action. These provisions shall not apply to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

C. An innocent land owner who holds title, security interest or any other interest in a brownfield site shall not be held liable for a containment or cleanup that may be required at a brownfield site pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if (i) the person did not cause, contribute, or consent to the release or threatened release, (ii) the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, (iii) the person made all appropriate inquiries into the previous uses of the facility in accordance with generally accepted good commercial and customary standards and practices, including those established by federal law, (iv) the person exercises appropriate care with respect to hazardous substances found at the facility by taking reasonable steps to stop any continuing release, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substances, and (v) the person does not impede the performance of any response action and if either (a) at the time the person acquired the interest, he did not know and had no reason to know that any hazardous substances had been or were likely to have been disposed of on, in, or at the site, or (b) the person is a government entity that acquired the site by escheat or through other involuntary transfer or acquisition. These provisions shall not apply to sites subject to the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.).

D. A person that owns real property that is contiguous to or otherwise similarly situated with respect to, and that is or may be contaminated by a release or threatened release of a hazardous substance from

real property that is not owned by that person shall not be considered liable for a containment or cleanup that may be required pursuant to the Virginia Waste Management Act (§ 10.1-1400 et seq.), the State Water Control Law (§ 62.1-44.2 et seq.), or the State Air Pollution Control Law (§ 10.1-1300 et seq.) if the person did not cause, contribute, or consent to the release or threatened release, the person is not liable or potentially liable through any direct or indirect familial relationship or any contractual, corporate, or financial relationship or is not the result of a reorganization of a business entity that was potentially liable, and if such person provides full cooperation, assistance and access to persons that are authorized to conduct response actions at the facility from which there has been a release.

E. The provisions of this section shall not otherwise limit the authority of the Department, the State Water Control Board, the Virginia Waste Management Board, or the State Air Pollution Control Board to require any person responsible for the contamination or pollution to contain or clean up sites where solid or hazardous waste or other substances have been improperly managed.

2002, c. 378.

§ 10.1-1235. Limitation on liability at remediated properties under the jurisdiction of the Comprehensive Environmental Response, Compensation and Liability Act.

A. Any person not otherwise liable under state law or regulation, who acquires any title, security interest, or any other interest in property located in the Commonwealth listed on the National Priorities List under the jurisdiction of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (42 U.S.C. § 9601 et seq.), after the property has been remediated to the satisfaction of the Administrator of the United States Environmental Protection Agency, shall not be subject to civil enforcement or remediation action under this chapter, Chapter 13 (§ 10.1-1300 et seq.) of this title, the State Water Control Law (§ 62.1-44.2 et seq.), or any other applicable state law, or to private civil suit, related to contamination that was the subject of the satisfactory remediation, existing at or immediately contiguous to the property prior to the person acquiring title, security interest, or any other interest in such property.

B. Any person who acquires any title, security interest, or other interest in property from a person described in subsection A shall not be subject to enforcement or remediation actions or private civil suits to the same extent as the person provided in subsection A.

C. A person who holds title, a security interest, or any other interest in property prior to the property being acquired by a person described in subsection A shall not be relieved of any liability or responsibility by reacquiring title, a security interest, or any other interest in the property.

D. The provisions of this chapter shall not be construed to limit the statutory or regulatory authority of any state agency or to limit the liability or responsibility of any person when the activities of that person alter the remediation referred to in subsection A. The provisions of this section shall not modify the liability, if any, of a person who holds title, a security interest, or any other interest in property prior to sat-

isfactory remediation or the liability of a person who acquires the property after satisfactory remediation for damage caused by contaminants not included in the remediation.

2002, c. 378.

§ 10.1-1236. Access to abandoned brownfield sites.

A. Any local government or agency of the Commonwealth may apply to the appropriate circuit court for access to an abandoned brownfield site in order to investigate contamination, to abate any hazard caused by the improper management of substances within the jurisdiction of the Board, or to remediate the site. The petition shall include (i) a demonstration that all reasonable efforts have been made to locate the owner, operator or other responsible party and (ii) a plan approved by the Director and which is consistent with applicable state and federal laws and regulations. The approval or disapproval of a plan shall not be considered a case decision as defined by § 2.2-4001.

B. Any person, local government, or agency of the Commonwealth not otherwise liable under federal or state law or regulation who performs any investigative, abatement or remediation activities pursuant to this section shall not become subject to civil enforcement or remediation action under Chapter 14 (§ 10.1-1400 et seq.) of this title or other applicable state laws or to private civil suits related to contamination not caused by its investigative, abatement or remediation activities.

C. This section shall not in any way limit the authority of the Virginia Waste Management Board, Director, or Department otherwise created by Chapter 14 (§ 10.1-1400 et seq.) of this title.

2002, c. 378.

§ 10.1-1237. Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund established; uses.

A. There is hereby created and set apart a special, permanent, perpetual and nonreverting fund to be known as the Virginia Brownfields Restoration and Economic Redevelopment Assistance Fund for the purposes of promoting the restoration and redevelopment of brownfield sites and to address environmental problems or obstacles to reuse so that these sites can be effectively marketed to new economic development prospects. The Fund shall consist of sums appropriated to the Fund by the General Assembly, all receipts by the Fund from loans made by it, all income from the investment of moneys held in the Fund, and any other sums designated for deposit to the Fund from any source, public or private, including any federal grants, awards or other forms of financial assistance received by the Commonwealth.

B. The Authority shall administer and manage the Fund and establish the interest rates and repayment terms of such loans in accordance with a memorandum of agreement with the Partnership. The Partnership shall direct the distribution of loans or grants from the Fund to particular recipients based upon guidelines developed for this purpose. With approval from the Partnership, the Authority may disperse monies from the Fund for the payment of reasonable and necessary costs and expenses incurred in the administration and management of the Fund. The Authority may establish and collect a reasonable fee on outstanding loans for its management services.

C. All money belonging to the Fund shall be deposited in an account or 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 and signed by the Executive Director of the Authority or other officers or employees designated by the Board of Directors of 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. Money in the Fund shall not be commingled with other money of the Authority. Money in the Fund not needed for immediate use or disbursement may be invested or reinvested by the Authority in obligations or securities that are considered lawful investments for public funds under the laws of the Commonwealth. Expenditures and disbursements from the Fund shall be made by the Authority upon written request signed by the Chief Executive Officer of the Virginia Economic Development Partnership.

D. The Authority is empowered to collect, or to authorize others to collect on its behalf, amounts due to the Fund under any loan including, if appropriate, taking the action required by § 15.2-2659 to obtain payment of any amounts in default. Proceedings to recover amounts due to the Fund may be instituted by the Authority in the name of the Fund in the appropriate circuit court.

E. The Partnership may approve grants to local governments for the purposes of promoting the restoration and redevelopment of brownfield sites and to address real environmental problems or obstacles to reuse so that these sites can be effectively marketed to new economic development prospects. The grants may be used to pay the reasonable and necessary costs associated with the restoration and redevelopment of a brownfield site for (i) environmental and cultural resource site assessments, (ii) remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes, (iii) the necessary removal of human remains, the appropriate treatment of grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv) demolition and removal of existing structures, or other site work necessary to make a site or certain real property usable for new economic development, and (v) development of a remediation and reuse plan. The Partnership may establish such terms and conditions as it deems appropriate and shall evaluate each grant request in accordance with the guidelines developed for this purpose. The Authority shall disburse grants from the Fund in accordance with a written request from the Partnership.

F. The Authority may make loans to local governments, public authorities, corporations and partnerships to finance or refinance the cost of any brownfield restoration or remediation project for the purposes of promoting the restoration and redevelopment of brownfield sites and to address real environmental problems or obstacles to reuse so that these sites can be effectively marketed to economic development prospects. The loans shall be used to pay the reasonable and necessary costs related to the restoration and redevelopment of a brownfield site for (i) environmental and cultural

resource site assessments, (ii) remediation of a contaminated property to remove hazardous substances, hazardous wastes, or solid wastes, (iii) the necessary removal of human remains, the appropriate treatment of grave sites, and the appropriate and necessary treatment of significant archaeological resources, or the stabilization or restoration of structures listed on or eligible for the Virginia Historic Landmarks Register, (iv) demolition and removal of existing structures, or other site work necessary to make a site or certain real property usable for new economic development, and (v) development of a remediation and reuse plan.

The Partnership shall designate in writing the recipient of each loan, the purposes of the loan, and the amount of each such loan. No loan from the Fund shall exceed the total cost of the project to be financed or the outstanding principal amount of the indebtedness to be refinanced plus reasonable financing expenses.

G. Except as otherwise provided in this chapter, the Authority shall determine the interest rate and terms and conditions of any loan from the Fund, which may vary between local governments. Each loan shall be evidenced by appropriate bonds or notes of the local government payable to the Fund. The bonds or notes shall have been duly authorized by the local government and executed by its authorized legal representatives. The Authority is authorized to require in connection with any loan from the Fund such documents, instruments, certificates, legal opinions and other information as it may deem necessary or convenient. In addition to any other terms or conditions that the Authority may establish, the Authority may require, as a condition to making any loan from the Fund, that the local government receiving the loan covenant perform any of the following:

1. Establish and collect rents, rates, fees, taxes, and charges to produce revenue sufficient to pay all or a specified portion of (i) the costs of the project, (ii) any outstanding indebtedness incurred for the purposes of the project, including the principal of, premium, if any, and interest on the loan from the Fund to the local government, and (iii) any amounts necessary to create and maintain any required reserve.

2. Levy and collect ad valorem taxes on all property within the jurisdiction of the local government subject to local taxation sufficient to pay the principal of and premium, if any, and interest on the loan from the Fund to the local government.

3. Create and maintain a special fund or funds for the payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and any other amounts becoming due under any agreement entered into in connection with the loan, or the project or any portions thereof or other property of the local government, and deposit into any fund or funds amounts sufficient to make any payments on the loan as they become due and payable.

4. Create and maintain other special funds as required by the Authority.

5. Perform other acts otherwise permitted by applicable law to secure payment of the principal of, premium, if any, and interest on the loan from the Fund to the local government and to provide for the

remedies of the Fund in the event of any default by the local government in the payment of the loan, including, without limitation, any of the following:

a. The conveyance of, or the granting of liens on or security interests in, real and personal property, together with all rights, title and interest therein, to the Fund;

b. The procurement of insurance, guarantees, letters of credit and other forms of collateral, security, liquidity arrangements or credit supports for the loan from any source, public or private, and the payment therefor of premiums, fees, or other charges;

c. The combination of one or more projects, or the combination of one or more projects with one or more other undertakings, for the purpose of financing, and the pledging of the revenues from such combined projects and undertakings to secure the loan from the Fund to the local government made in connection with such combination or any part or parts thereof;

d. The maintenance, replacement, renewal, and repair of the project; and

e. The procurement of casualty and liability insurance.

6. Obtain a review of the accounting and the internal controls from the Auditor of Public Accounts or his legally authorized representatives. The Authority may request additional reviews at any time during the term of the loan.

7. Directly offer, pledge, and consent to the Authority to take action pursuant to § 62.1-216.1 to obtain payment of any amounts in default.

H. All local governments borrowing money from the Fund are authorized to perform any acts, take any action, adopt any proceedings and make and carry out any contracts that are contemplated by this chapter. Such contracts need not be identical among all local governments, but may be structured as determined by the Authority according to the needs of the contracting local governments and the Fund.

I. Subject to the rights, if any, of the registered owners of any of the bonds of the Authority, the Authority may consent to and approve any modification in the terms of any loan to any local government.

J. The Partnership, through its Chief Executive Officer, shall have the authority to access and release moneys in the Fund for purposes of this section as long as the disbursement does not exceed the balance of the Fund. If the Partnership, through its Chief Executive Officer, requests a disbursement in an amount exceeding the current Fund balance, the disbursement shall require the written approval of the Governor. Disbursements from the Fund may be made for the purposes outlined in this section, including, but not limited to, personnel, administrative and equipment costs and expenses directly incurred by the Partnership or the Authority, or by any other agency or political subdivision acting at the direction of the Partnership.

The Authority is empowered at any time and from time to time to pledge, assign or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be

held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned or transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned or transferred until no longer required for such purpose by the terms of the pledge, assignment or transfer.

K. The Authority is empowered at any time and from time to time to sell, upon such terms and conditions as the Authority shall deem appropriate, any loan, or interest therein, made pursuant to this chapter. The net proceeds of sale remaining after the payment of the costs and expenses of the sale shall be designated for deposit to, and become part of, the Fund.

L. The Authority may, with the approval of the Partnership, pledge, assign or transfer from the Fund to banks or trust companies designated by the Authority any or all of the assets of the Fund to be held in trust as security for the payment of the principal of, premium, if any, and interest on any or all of the bonds, as defined in § 62.1-199, issued to finance any project. The interests of the Fund in any assets so transferred shall be subordinate to the rights of the trustee under the pledge, assignment or transfer. To the extent funds are not available from other sources pledged for such purpose, any of the assets or payments of principal and interest received on the assets pledged, assigned or transferred or held in trust may be applied by the trustee thereof to the payment of the principal of, premium, if any, and interest on such bonds of the Authority secured thereby, and, if such payments are insufficient for such purpose, the trustee is empowered to sell any or all of such assets and apply the net proceeds from the sale to the payment of the principal of, premium, if any, and interest on such bonds of the Authority. Any assets of the Fund pledged, assigned or transferred in trust as set forth above and any payments of principal, interest or earnings received thereon shall remain part of the Fund but shall be subject to the pledge, assignment or transfer to secure the bonds of the Authority and shall be held by the trustee to which they are pledged, assigned or transferred until no longer required for such purpose by the terms of the pledge, assignment or transfer.

M. The Partnership, in consultation with the Department of Environmental Quality, shall develop guidance governing the use of the Fund and including criteria for project eligibility that considers the extent to which a grant or loan will facilitate the use or reuse of existing infrastructure, the extent to which a grant or loan will meet the needs of a community that has limited ability to draw on other funding

sources because of the small size or low income of the community, the potential for redevelopment of the site, the economic and environmental benefits to the surrounding community, and the extent of the perceived or real environmental contamination at the site. The guidelines shall include a requirement for a one-to-one match by the recipient of any grant made by or from the Fund.

2002, c. 378; 2010, c. 869.

Chapter 12.2 - UNIFORM ENVIRONMENTAL COVENANTS ACT

§ 10.1-1238. Definitions.

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

"Activity and use limitations" means restrictions or obligations created under this chapter with respect to real property.

"Agency" means the Department of Environmental Quality or any other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

"Common interest community" means a condominium, cooperative, or other real property with respect to which a person, by virtue of the person's ownership of a parcel of real property, is obligated to pay property taxes or insurance premiums, for maintenance or improvement of other real property described in a recorded covenant that creates the common interest community.

"Department" means the Department of Environmental Quality.

"Environmental covenant" means a servitude arising under an environmental response project that imposes activity and use limitations.

"Environmental response project" means a plan or work performed for environmental remediation of real property and conducted:

1. Under a federal or state program governing environmental remediation of real property;

2. Incident to closure of a solid or hazardous waste management unit, if the closure is conducted with approval of an agency; or

3. Under a state voluntary clean-up program including the Brownfield Restoration and Land Renewal Act (§ 10.1-1230 et seq.).

"Holder" means the grantee of an environmental covenant as specified in subsection A of § 10.1-1239.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

"Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

2010, c. 691.

§ 10.1-1239. Nature of rights; subordination of interests.

A. Any person, including a person that owns an interest in the real property, the agency, or a municipality or other unit of local government, may be a holder. An environmental covenant may identify more than one holder. The interest of a holder is an interest in real property.

B. A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, is not an interest in real property.

C. An agency is bound by any obligation it assumes in an environmental covenant, but an agency does not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant is bound by the obligations the person assumes in the covenant, but signing the covenant does not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

D. The following rules apply to interests in real property in existence at the time an environmental covenant is created or amended:

1. An interest that has priority under other law is not affected by an environmental covenant unless the person that owns the interest subordinates that interest to the covenant.

2. This chapter does not require a person that owns a prior interest to subordinate that interest to an environmental covenant or to agree to be bound by the covenant.

3. A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environmental covenant covers commonly owned property in a common interest community, the record may be signed by any person authorized by the governing board of the owners' association.

4. An agreement by a person to subordinate a prior interest to an environmental covenant affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant or affect that person's existing liability.

2010, c. 691.

§ 10.1-1240. Contents of environmental covenant.

A. An environmental covenant shall:

1. State that the instrument is an environmental covenant executed pursuant to the Uniform Environmental Covenants Act (§ 10.1-1238 et seq. of the Code of Virginia);

2. Contain a legally sufficient description of the real property subject to the covenant;

3. Describe the activity and use limitations on the real property;

4. Identify every holder;

5. Be signed by the agency, every holder, and, unless waived by the agency, every owner of the fee simple of the real property subject to the covenant; and

6. Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

B. In addition to the information required by subsection A, an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including:

1. Any requirements for notice following transfer of a specified interest in, or concerning proposed changes in use of, applications for building permits for, or proposals for any site work affecting the contamination on, the property subject to the covenant;

2. Any requirements for periodic reporting describing compliance with the covenant, including a requirement that a qualified and certified professional engineer inspect, investigate and report on the compliance with the covenant;

3. Any rights of access to the property granted in connection with implementation or enforcement of the covenant;

4. A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;

5. Any limitations on amendment or termination of the covenant in addition to those contained in §§ 10.1-1245 and 10.1-1246; and

6. Any rights of the holder in addition to its right to enforce the covenant pursuant to § 10.1-1247.

C. In addition to other conditions for approval of an environmental covenant, the agency may require those persons specified by the agency who have interests in the real property to sign the covenant.

2010, c. 691.

§ 10.1-1241. Effect on other instruments; validity.

A. An environmental covenant that complies with this chapter runs with the land.

B. An environmental covenant that is otherwise effective is valid and enforceable even if:

1. It is not appurtenant to an interest in real property;

2. It can be or has been assigned to a person other than the original holder;

3. It is not of a character that has been recognized traditionally at common law;

4. It imposes a negative burden;

5. It imposes an affirmative obligation on a person having an interest in the real property or on the holder;

6. The benefit or burden does not touch or concern real property;

7. There is no privity of estate or contract;

8. The holder dies, ceases to exist, resigns, or is replaced; or

9. The owner of an interest subject to the environmental covenant and the holder are the same person.

C. An instrument that creates restrictions or obligations with respect to real property that would qualify as activity and use limitations except for the fact that the instrument was recorded before the effective date of this chapter is not invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection B or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter does not apply in any other respect to such an instrument.

D. This chapter does not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest, that is otherwise enforceable under the law of the Commonwealth.

E. An environmental covenant pursuant to this chapter may be utilized only when agreed to by the agencies, owners, and holders to such covenant. When restrictions and obligations are imposed on real property in connection with an environmental response project, they may be drafted and recorded in any manner permissible under the laws of Virginia. This chapter applies only to activity and use limitations drafted and recorded in accordance with the provisions of this chapter.

2010, c. 691; 2012, c. 278.

§ 10.1-1242. Relationship to other land use law.

This chapter does not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than this chapter.

2010, c. 691.

§ 10.1-1243. Notice.

A. A copy of an environmental covenant shall be provided by the persons and in the manner required by the agency to:

1. Each person that signed the covenant;

2. Each person holding a recorded interest in the real property subject to the covenant;

3. Each person in possession of the real property subject to the covenant;

4. Each municipality or other unit of local government in which real property subject to the covenant is located; and

5. Any other person the agency requires.

B. The validity of a covenant is not affected by failure to provide a copy of the covenant as required under this section.

2010, c. 691.

§ 10.1-1244. Recording.

A. An environmental covenant and any amendment or termination of the covenant shall be recorded in every locality in which any portion of the real property subject to the covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

B. Except as otherwise provided in § 10.1-1245, an environmental covenant is subject to the laws of the Commonwealth governing recording and priority of interests in real property.

2010, c. 691.

§ 10.1-1245. Duration; amendment by court action.

A. An environmental covenant is perpetual unless it is:

1. By its terms limited to a specific duration or terminated by the occurrence of a specific event;

2. Terminated by consent pursuant to § 10.1-1246;

3. Terminated pursuant to subsection B;

4. Terminated by foreclosure of an interest that has priority over the environmental covenant; or

5. Terminated or modified in an eminent domain proceeding, but only if:

a. The agency that signed the covenant is a party to the proceeding;

b. All persons identified in subsections A and B of § 10.1-1246 are given notice of the pendency of the proceeding; and

c. The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

B. If the agency that signed an environmental covenant has determined that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in subsections A and B of § 10.1-1246 have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant. The agency's determination or its failure to make a determination upon request is subject to review pursuant to the Administrative Process Act (§ 2.2-4000 et seq.).

C. Except as otherwise provided in subsections A and B, an environmental covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

2010, c. 691.

§ 10.1-1246. Amendment or termination by consent.

A. An environmental covenant may be amended or terminated by consent only if the amendment or termination is signed by:

1. The agency;

2. Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;

3. Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and

4. Except as otherwise provided in subdivision D 2, the holder.

B. If an interest in real property is subject to an environmental covenant, the interest is not affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

C. Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

D. Except as otherwise provided in an environmental covenant:

1. A holder may not assign its interest without consent of the other parties;

2. A holder may be removed and replaced by agreement of the other parties specified in subsection A; and

3. A court of competent jurisdiction may fill a vacancy in the position of holder.

2010, c. 691.

§ 10.1-1247. Enforcement of environmental covenant.

A. A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

1. A party to the covenant;

2. The agency or, if it is not the agency, the Department;

3. Any person to whom the covenant expressly grants power to enforce;

4. A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

5. A municipality or other unit of local government in which the real property subject to the covenant is located.

B. This chapter does not limit the regulatory authority of the agency or the Department under law other than this chapter with respect to an environmental response project.

C. A person is not responsible for or subject to liability for environmental remediation solely because he has the right to enforce an environmental covenant.

2010, c. 691.

§ 10.1-1248. Fees; Environmental Covenants Fund established.

A. The Department shall establish fees, to be paid by the fee simple owner of the real property subject to the covenant, which shall be assessed for the purpose of funding the costs of administering the provisions of this chapter and shall be used solely for the purposes specified in this chapter.

B. There is hereby created in the state treasury a special nonreverting fund to be known as the Environmental Covenants Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. Notwithstanding the provisions of § 2.2-1802, all moneys collected pursuant to this section 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 described in subsection A. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request signed by Director. The Fund shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

2010, c. 691.

§ 10.1-1249. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.) but does not modify, limit, or supersede § 101 of that Act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in § 103 of that Act (15 U.S.C. § 7003 (b)).

2010, c. 691.

§ 10.1-1250. Regulations.

The Department may, as necessary, adopt regulations to implement the provisions of this chapter.

2010, c. 691.

Chapter 13 - AIR POLLUTION CONTROL BOARD

Article 1 - GENERAL PROVISIONS

§ 10.1-1300. Definitions.

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

"Advisory Board" means the State Advisory Board on Air Pollution.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property.

"Board" means the State Air Pollution Control Board.

"Department" means the Department of Environmental Quality.

"Director" or "Executive Director" means the Executive Director of the Department of Environmental Quality.

"Owner" shall have no connotation other than that customarily assigned to the term "person," but shall include bodies politic and corporate, associations, partnerships, personal representatives, trustees and committees, as well as individuals.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Special order" means a special order issued under § 10.1-1309.

"Wood heater" means a wood stove, pellet stove, wood-fired hydronic heater, wood-burning forced-air furnace, or masonry wood heater, any of which is solely designed for heating a home or a business and with either (i) uncontrolled fine particulate matter with an aerodynamic diameter less than or equal to 2.5 micrometers (PM2.5) emissions of less than 10 tons per year or with a maximum heat input of less than 1,000,000 Btu/hr or (ii) uncontrolled fine particulate matter with an aerodynamic diameter less than or equal to 10 micrometers (PM10) emissions of less than 15 tons per year or with a maximum heat input of less than 1,000,000 Btu/hr.

1966, c. 497, § 10-17.10; 1968, c. 311; 1970, c. 469; 1971, Ex. Sess., c. 91; 1972, c. 781; 1985, c. 448; 1988, c. 891; 1990, c. 238; 1991, c. 702; 2004, c. 408; 2015, c. 471.

§ 10.1-1300.1. Certified mail; subsequent mail or notices may be sent by regular mail.

Whenever in this chapter the Board, the Department, or the Director 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 Board, the Department, or the Director may be sent by regular mail.

2011, c. 566.

§ 10.1-1301. State Air Pollution Control Board; membership; terms; vacancies.

The State Air Pollution Control Board shall be composed of seven members appointed by the Governor for four-year terms. Vacancies other than by expiration of term shall be filled by the Governor by appointment for the unexpired term.

1966, c. 497, § 10-17.11; 1988, c. 891; 2008, cc. 276, 557.

§ 10.1-1302. Qualifications of members of Board.

The members of the Board shall be citizens of the Commonwealth and shall be selected from the Commonwealth at large on the basis of merit without regard to political affiliation. Members shall, by their education, training, or experience, be knowledgeable of air quality control and regulation, and shall be fairly representative of conservation, public health, business, and agriculture. No person appointed to the Board shall be employed by persons subject to permits or enforcement orders of the Board or receive a significant portion of his income, whether directly or indirectly, from persons subject to permits or enforcement orders of the Board. Income from a vested retirement benefit shall not be

considered income for purposes of this section. Notwithstanding any other provision of this section relating to Board membership, the qualifications for Board membership shall not be more strict than those that are required by federal statute or regulations of the United States Environmental Protection Agency. The provisions of this section shall be in addition to the requirements of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.).

1966, c. 497, § 10-17.12; 1979, c. 117; 1987, Sp. Sess., c. 1; 1988, c. 891; 1992, c. 675; 1994, c. 461; 2008, cc. 276, 557.

§ 10.1-1303. Chairman of the Board; Executive Director; cooperation of state agencies.

The Board shall elect its own chairman. The Governor shall appoint an Executive Director who shall serve as executive officer of the Board, but shall not serve as a member thereof. The Board may call upon any state department or agency for technical assistance. All departments and agencies of the Commonwealth shall, upon request, assist the Board in the performance of its duties.

1966, c. 497, § 10-17.14; 1972, c. 781; 1984, c. 444; 1985, c. 397; 1988, c. 891; 1990, c. 238.

§ 10.1-1304. Meetings of Board; quorum.

The Board shall meet at least four times a year. Special meetings may be held at any time or place to be determined by the Board upon the call of the chairman or upon written request of any two members. All members shall be notified of the time and place of any meeting at least five days in advance of the meeting. A majority of the members of the Board shall constitute a quorum for the transaction of business.

1966, c. 497, § 10-17.15; 1988, c. 891; 2008, cc. 276, 557.

§ 10.1-1305. Records of proceedings of Board.

The Board shall keep a complete and accurate record of the proceedings at all its meetings, a copy of which shall be kept on file in the office of the Director and available for public inspection.

1966, c. 497, § 10-17.16; 1977, c. 31; 1988, cc. 26, 891.

§ 10.1-1306. Inspections, investigations, etc.

The Board shall make, or cause to be made, such investigations and inspections and do such other things as are reasonably necessary to carry out the provisions of this chapter, within the limits of the appropriations, study grants, funds, or personnel which are available for the purposes of this chapter, including the achievement and maintenance of such levels of air quality as will protect human health, welfare and safety and to the greatest degree practicable prevent injury to plant and animal life and property and which will foster the comfort and convenience of the people of the Commonwealth and their enjoyment of life and property and which will promote the economic and social development of the Commonwealth and facilitate enjoyment of its attractions.

1966, c. 497, § 10-17.17; 1988, c. 891.

§ 10.1-1307. Further powers and duties of Board.

A. The Board shall have the power to control and regulate its internal affairs; initiate and supervise research programs to determine the causes, effects, and hazards of air pollution; initiate and supervise statewide programs of air pollution control education; cooperate with and receive money from the federal government or any county or municipal government, and receive money from any other source, whether public or private; develop a comprehensive program for the study, abatement, and control of all sources of air pollution in the Commonwealth; and advise, consult, and cooperate with agencies of the United States and all agencies of the Commonwealth, political subdivisions, private industries, and any other affected groups in furtherance of the purposes of this chapter.

B. The Board may adopt by regulation emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles, only as provided in Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2.

C. After any regulation has been adopted by the Board pursuant to § 10.1-1308, it may in its discretion grant local variances therefrom, if it finds after an investigation and hearing that local conditions warrant. If local variances are permitted, the Board shall issue an order to this effect. Such order shall be subject to revocation or amendment at any time if the Board after a hearing determines that the amendment or revocation is warranted. Variances and amendments to variances shall be adopted only after a public hearing has been conducted pursuant to the public advertisement of the subject, date, time, and place of the hearing at least 30 days prior to the scheduled hearing. The hearing shall be conducted to give the public an opportunity to comment on the variance.

D. After the Board has adopted the regulations provided for in § 10.1-1308, it shall have the power to: (i) initiate and receive complaints as to air pollution; (ii) hold or cause to be held hearings and enter orders diminishing or abating the causes of air pollution and orders to enforce its regulations pursuant to § 10.1-1309; and (iii) institute legal proceedings, including suits for injunctions for the enforcement of its orders, regulations, and the abatement and control of air pollution and for the enforcement of penalties.

E. The Board in making regulations and in approving variances, control programs, or permits, and the courts in granting injunctive relief under the provisions of this chapter, shall consider facts and circumstances relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

1. The character and degree of injury to, or interference with, safety, health, or the reasonable use of property which is caused or threatened to be caused;

2. The social and economic value of the activity involved;

3. The suitability of the activity to the area in which it is located; and

4. The scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

F. The Board may designate one of its members, the Director, or a staff assistant to conduct the hearings provided for in this chapter. A record of the hearing shall be made and furnished to the Board for its use in arriving at its decision.

G. The Board shall not:

1. Adopt any regulation limiting emissions from wood heaters; or

2. Enforce against a manufacturer, distributor, or consumer any federal regulation limiting emissions from wood heaters adopted after May 1, 2014.

H. The Board shall submit an annual report to the Governor and General Assembly on or before October 1 of each year on matters relating to the Commonwealth's air pollution control policies and on the status of the Commonwealth's air quality.

1966, c. 497, §§ 10-17.16, 10-17.18; 1968, c. 311; 1969, Ex. Sess., c. 8; 1970, c. 469; 1972, c. 781; 1973, c. 251; 1977, c. 31; 1980, c. 469; 1984, c. 734; 1988, cc. 26, 891; 1990, c. 231; 2004, c. 650; 2015, c. 471.

§ 10.1-1307.01. Further duties of Board; localities particularly affected.

A. Before promulgating a regulation under consideration, granting a variance to an existing regulation, or issuing a permit for the construction of a new major source or for a major modification to an existing source, if the Board finds that there is a locality particularly affected by the regulation, variance, or permit, the Board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in each locality affected at least 30 days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall provide information regarding specific pollutants and the total quantity of each that may be emitted and shall list the type and quantity of any fuels to be used.

2. Mail the notice to the chief elected official and chief administrative officer of and the planning district commission for such locality.

Written comments shall be accepted by the Board for at least 15 days after any hearing on the regulation, variance, or permit, unless the Board votes to shorten the period.

B. Before granting any variance to an existing regulation or issuing any permit for (i) a new fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (ii) a major modification to an existing source that is a fossil fuel-fired generating facility with a capacity of 500 megawatts or more, (iii) a new fossil fuel-fired compressor station facility used to transport natural gas, or (iv) a major modification to an existing source that is a fossil fuel-fired compressor station facility used to transport natural gas, if the Board finds that there is a locality particularly affected by such variance or permit, the Board shall:

1. Require the applicant to publish a notice in at least one local paper of general circulation in any locality particularly affected at least 60 days prior to the close of any public comment period. Such notice shall (i) contain a statement of the estimated local impact of the proposed action; (ii) provide information regarding specific pollutants and the total quantity of each that may be emitted; (iii) list the type, quantity, and source of any fuel to be used; (iv) advise the public how to request Board consideration or a public hearing; and (v) advise the public where to obtain information regarding the proposed action. The Department shall post such notice on the Department website and on a Department social media account.

2. Require the applicant to mail the notice to (i) the chief elected official of, chief administrative officer of, and planning district commission for each locality particularly affected; (ii) every public library and public school located within five miles of such facility; and (iii) the owner of each parcel of real property that is depicted as adjacent to the facility on the current real estate tax assessment maps of the locality.

Written comments shall be accepted by the Board for at least 30 days after any hearing on such variance or permit, unless the Board votes to shorten the period.

C. For the purposes of this section, the term "locality particularly affected" means any locality that bears any identified disproportionate material air quality impact that would not be experienced by other localities.

1993, c. 944; 1997, c. 612; 2020, c. 1110.

§ 10.1-1307.02. Permit for generation of electricity during ISO-declared emergency.

A. As used in this section:

"Emergency generation source" means a stationary internal combustion engine that operates according to the procedures in the ISO's emergency operations manual during an ISO-declared emergency.

"ISO-declared emergency" means a condition that exists when the independent system operator, as defined in § 56-576, notifies electric utilities that an emergency exists or may occur and that complies with the definition of "emergency" adopted by the Board pursuant to subsection B.

"Retail customer" has the same meaning ascribed thereto in § 56-576.

B. The Board shall adopt a general permit or permits for the use of back-up generation to authorize the construction, installation, reconstruction, modification, and operation of emergency generation sources during ISO-declared emergencies. Such general permit or permits shall include a definition of "emergency" that is compatible with the ISO's emergency operations manual. After adoption of such general permit or permits, any amendments to the Board's regulations necessary to carry out the provisions of this section shall be exempt from Article 2 (§ 2.2-4006 et seq.) of the Administrative Process Act.

2009, cc. 752, 855.

§ 10.1-1307.03. Requirements applicable to Outer Continental Shelf sources.

A. As used in this section:

"Outer Continental Shelf" has the meaning provided by § 2 of the federal Outer Continental Shelf Lands Act (43 U.S.C. § 1331).

"Outer Continental Shelf sources" has the same meaning ascribed thereto in § 328(a)(4)(C) of the Clean Air Act (42 U.S.C. § 7627 (a)(4)(C)).

B. The Board, by January 1, 2011, shall adopt any regulations necessary to implement and enforce the requirements of § 328 of the Clean Air Act (42 U.S.C. § 7627) relating to requirements to control air pollution from Outer Continental Shelf sources located offshore of the Commonwealth. The regulations adopted by the Board shall not differ materially from the regulations promulgated by the U.S. Environmental Protection Agency in implementing § 328 of the Clean Air Act.

2010, c. 689.

§ 10.1-1307.1. Department continued; appointment of Director.

A. The Department of Air Pollution Control is continued as an agency within the Secretariat of Natural Resources. The Department shall be headed by a Director appointed by the Governor, subject to confirmation by the General Assembly, to serve at the pleasure of the Governor.

B. In addition to the powers designated elsewhere in this chapter, the Department shall have the power to:

1. Administer the policies and regulations established by the Board pursuant to this chapter;

2. Employ such personnel as may be required to carry out the duties of the Department;

3. Make and 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, agencies, and governmental subdivisions of the Commonwealth;

4. Accept grants from the United States government and agencies and instrumentalities thereof and any other source. To these ends, the Department shall have the power to comply with such conditions and execute such agreements as may be necessary, convenient, or desirable; and

5. Perform all acts necessary or convenient to carry out the purposes of this chapter.

1990, c. 238.

§ 10.1-1307.2. Powers and duties of the Executive Director.

A. The Executive Director, under the direction and control of the Governor, shall exercise such powers and perform such duties as are conferred or imposed upon him by the law and shall perform such other duties required of him by the Governor and the Board.

B. The Executive Director may be vested with the authority of the Board when it is not in session, subject to such regulations or delegation as may be prescribed by the Board.

In no event shall the Executive Director have the authority to adopt or promulgate any regulation.

C. In addition to the powers designated elsewhere in this chapter, the Director shall have the following general powers:

1. Supervise and manage the Department;

2. Prepare and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations;

3. Provide investigative and such other services as needed by the Department to enforce applicable laws and regulations;

4. Provide for the administrative functions and services of the Department;

5. Provide such office facilities as will allow the Department to carry out its duties; and

6. Assist the citizens (including corporate citizens) of the Commonwealth by providing guidelines, time tables, suggestions and in general being helpful to applicants seeking state and federal air pollution control permits.

1990, c. 238.

§ 10.1-1307.3. Executive Director to enforce laws.

A. The Executive Director or his duly authorized representative shall have the authority to:

1. Supervise, administer, and enforce the provisions of this chapter and regulations and orders of the Board as are conferred upon him by the Board;

2. Investigate any violations of this chapter and regulations and orders of the Board;

3. Require that air pollution records and reports be made available upon request, and require owners to develop, maintain, and make available such other records and information as are deemed necessary for the proper enforcement of this chapter and regulations and orders of the Board;

4. Upon presenting appropriate credentials to the owner, operator, or agent in charge:

a. Enter without delay and at reasonable times any business establishment, construction site, or other area, workplace, or environment in this Commonwealth; and

b. Inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, without prior notice, unless such notice is authorized by the Director or his representative, any such business establishment or place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment, and materials therein, and question privately any such employer, officer, owner, operator, agent, or employee. If such entry or inspection is refused, prohibited, or otherwise interfered with, the Director shall have the power to seek from a court having equity jurisdiction an order compelling such entry or inspection; and

5. Temporarily suspend the enforcement of any regulation or permit requirement applicable to any part of an electrical generation and transmission system, whether owned or contracted for, when a public

electric utility providing power within the Commonwealth so requests and has suffered a force majeure event as defined in subdivision 7 of § 59.1-21.18:2.

B. The Executive Director or his duly authorized representative may pursue enforcement action for a violation of opacity requirements or limits based on (i) visual observations conducted pursuant to methods approved by the U.S. Environmental Protection Agency, (ii) data from certified continuous opacity monitors, or (iii) other methods approved by the U.S. Environmental Protection Agency.

1990, c. 238; 1995, c. 184; 2007, c. 148.

§ 10.1-1308. Regulations.

A. The Board, after having studied air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement, shall have the power to promulgate regulations, including emergency regulations, abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.), except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable. No such regulation shall prohibit the burning of leaves from trees by persons on property where they reside if the local governing body of the county, city or town has enacted an otherwise valid ordinance regulating such burning. The regulations shall not promote or encourage any substantial degradation of present air quality in any air basin or region which has an air quality superior to that stipulated in the regulations. Any regulations adopted by the Board to have general effect in part or all of the Commonwealth shall be filed in accordance with the Virginia Register Act (§ 2.2-4100 et seq.).

B. Any regulation that prohibits the selling of any consumer product shall not restrict the continued sale of the product by retailers of any existing inventories in stock at the time the regulation is promulgated.

C. Any regulation requiring the use of stage 1 vapor recovery equipment at gasoline dispensing facilities may be applicable only in areas that have been designated at any time by the U.S. Environmental Protection Agency as nonattainment for the pollutant ozone. For purposes of this section, gasoline dispensing facility means any site where gasoline is dispensed to motor vehicle tanks from storage tanks.

D. No regulation of the Board shall require permits for the construction or operation of qualified fumigation facilities, as defined in § 10.1-1308.01.

E. Notwithstanding any other provision of law and no earlier than July 1, 2024, the Board shall adopt regulations to reduce, for the period of 2031 to 2050, the carbon dioxide emissions from any electricity generating unit in the Commonwealth, regardless of fuel type, that serves an electricity generator with a nameplate capacity equal to or greater than 25 megawatts that supplies (i) 10 percent or more of its annual net electrical generation to the electric grid or (ii) more than 15 percent of its annual total useful

energy to any entity other than the manufacturing facility to which the generating source is interconnected (covered unit).

The Board may establish, implement, and manage an auction program to sell allowances to carry out the purposes of such regulations or may in its discretion utilize an existing multistate trading system.

The Board may utilize its existing regulations to reduce carbon dioxide emissions from electric power generating facilities; however, the regulations shall provide that no allowances be issued for covered units in 2050 or any year beyond 2050. The Board may establish rules for trading, the use of banked allowances, and other auction or market mechanisms as it may find appropriate to control allowance costs and otherwise carry out the purpose of this subsection.

In adopting such regulations, the Board shall consider only the carbon dioxide emissions from the covered units. The Board shall not provide for emission offsetting or netting based on fuel type.

Regulations adopted by the Board under this subsection shall be subject to the requirements set out in §§ 2.2-4007.03, 2.2-4007.04, 2.2-4007.05, and 2.2-4026 through 2.2-4030 of the Administrative Process Act (§ 2.2-4000 et seq.) and shall be published in the Virginia Register of Regulations.

1966, c. 497, §§ 10-17.16, 10-17.18; 1968, c. 311; 1969, Ex. Sess., c. 8; 1970, c. 469; 1972, c. 781; 1973, c. 251; 1980, c. 469; 1984, c. 734; 1988, cc. 26, 891; 1993, c. 456; 1997, c. 55; 2005, c. 66; 2006, c. 71; 2011, c. 393; 2020, cc. 1193, 1194.

§ 10.1-1308.01. Qualified fumigation facilities.

A. For the purposes of this section, a "qualified fumigation facility" means a facility that:

1. Conducts commodity fumigation using any chemical regulated under Section 112(b) of the federal Clean Air Act of foods, products, components, livestock or materials including fumigation subject to regulation by either the U.S. Department of Agriculture or the U.S. Food and Drug Administration, or conducts such fumigation as required by other international, federal, or state regulations or requirements;

2. Is not otherwise exempt under regulations of the Board for toxic air pollutants;

3. Has the potential to emit less than 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants regulated by the Board pursuant to its regulations in Articles 4 (9VAC5-60-200 et seq.) and 5 (9VAC5-60-300 et seq.) of Chapter 60 (9VAC5-60); or is not otherwise subject to regulation under the provisions of the federal Clean Air Act (42 U.S.C. § 7401 et seq.) related to hazardous air pollutants. For determining potential to emit, "facility" means any building, structure, facility or installation that emits or may emit any regulated air pollutant. A facility shall include all of the pollutant-emitting activities that belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person or persons under common control;

4. Operates in compliance with all federal and state regulations for licensing and operation of fumigation facilities and licensing of fumigant applicators; and

5. Conducts fumigation activities that are, at a minimum, one of the following:

a. Performed in buildings or locations within the facility that are no closer than 300 feet from any building, structure, or area not within the facility if such building, structure, or area is regularly occupied by the public. The conditions in this subdivision may be waived or reduced by the Department, in consultation with the Department of Agriculture and Consumer Services;

b. Performed in buildings or containers that are sealed during fumigation and that voluntarily employ capture and control technologies for the fumigant emissions; or

c. Monitored utilizing equipment and methods recognized by the National Institute for Occupational Safety and Health, or other equipment and methods widely accepted as an industry standard, to ensure the applicable fumigant airborne concentrations referenced in the permissible exposure limits established by the Department of Labor and Industry or the parts per million standard stipulated in the federally approved pesticide labeling, whichever is more stringent, is not exceeded at the fence or property line during active fumigation and fumigation aeration.

B. The operator of a qualified fumigation facility shall provide to the Department, by first-class mail, facsimile, or electronic mail:

1. A written notice prior to conducting fumigation activity at the facility that shall include:

a. Exact physical location at the facility of the particular fumigation operation and distance from any building, structure, or other area regularly occupied by the public;

b. Object being fumigated (e.g. rail car, truck container, warehouse, bin, storage silo, open pallet of product);

c. Product being fumigated;

d. Number of objects and quantity of product being fumigated;

e. Containment system (e.g. tarp, sealed container);

f. Fumigant to be used;

g. Expected quantity of fumigant to be used;

h. Expected duration of fumigation;

i. Expected duration of aeration;

j. Material safety data sheet (MSDS) for fumigant; and

k. A brief description of capture and control device, if used pursuant to subdivision A 5 b.

2. A written report completed within four business days following the completion of the fumigation activity that shall include:

a. Total quantity of fumigant actually used;

b. Actual duration of aeration; and

c. Monitoring results for fumigation operations conducted pursuant to subdivision A 5 c.

C. Prior to the application of fumigant at the site, a facility shall post visible and legible signs at the facility fence or property line closest to any public right-of-way. The signs shall remain in place until completion of the aeration process and shall conform to the format for placards mandated by the federally approved fumigant label.

D. In-transit fumigations where the planned aeration is scheduled to occur outside of the Commonwealth are not subject to Board regulations.

2011, c. 393.

§ 10.1-1308.1. Streamlined permitting process for qualified energy generators.

A. As used in this section:

"Biomass" means organic material that is available on a renewable or recurring basis, including:

1. Forest-related materials, including mill residues, logging residues, forest thinnings, slash, brush, low-commercial value materials or undesirable species, and woody material harvested for the purpose of forest fire fuel reduction or forest health and watershed improvement;

2. Agricultural-related materials, including orchard trees, vineyard, grain or crop residues, including straws, aquatic plants and agricultural processed co-products and waste products, including fats, oils, greases, whey, and lactose;

3. Animal waste, including manure and slaughterhouse and other processing waste;

4. Solid woody waste materials, including landscape trimmings, waste pallets, crates and manufacturing, construction, and demolition wood wastes, excluding pressure-treated, chemically treated or painted wood wastes and wood contaminated with plastic;

5. Crops and trees planted for the purpose of being used to produce energy;

6. Landfill gas, wastewater treatment gas, and biosolids, including organic waste byproducts generated during the wastewater treatment process; and

7. Municipal solid waste, excluding tires and medical and hazardous waste.

"Expedited process" means a process that (i) requires the applicant to pay fees to the Commonwealth in connection with the issuance and processing of the permit application that do not exceed $50 and (ii) has a duration, from receipt of a complete permit application until final action by the Board or Department on the application, not longer than 60 days.

"Qualified energy generator" means a commercial facility located in the Commonwealth with the capacity annually to generate no more than five megawatts of electricity, or produce the equivalent amount of energy in the form of fuel, steam, or other energy product, that is generated or produced from biomass, and that is sold to an unrelated person or used in a manufacturing process.

B. The Board shall develop an expedited process for issuing any permit that the Board is required to issue for the construction or operation of a qualified energy generator. The development of the expedited permitting process shall be in accordance with subdivision A 8 of § 2.2-4006; however, if the construction or operation of a qualified energy generator is subject to a major new source review program required by § 110(a)(2)(C) of the federal Clean Air Act, this section shall not apply.

2008, c. 258; 2010, c. 65.

§ 10.1-1309. Issuance of special orders; civil penalties.

A. The Board shall have the power to issue special orders to:

(i) owners who are permitting or causing air pollution as defined by § 10.1-1300, to cease and desist from such pollution;

(ii) owners who have failed to construct facilities in accordance with or have failed to comply with plans for the control of air pollution submitted by them to and approved by the Board, to construct such facilities in accordance with or otherwise comply with, such approved plans;

(iii) owners who have violated or failed to comply with the terms and provisions of any Board order or directive to comply with such terms and provisions;

(iv) owners who have contravened duly adopted and promulgated air quality standards and policies, to cease such contravention and to comply with air quality standards and policies;

(v) require any owner to comply with the provisions of this chapter and any Board decision; and

(vi) require any person to pay civil penalties of up to $32,500 for each violation, not to exceed $100,000 per order, if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with subsection B. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination.

B. Such special orders are to be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020 with reasonable notice to the affected owners of the time, place and purpose thereof, and they shall become effective not less than five days after service as provided in subsection C below. Should the Board find that any such owner is unreasonably affecting the public health, safety or welfare, or the health of animal or plant life, or property, after a reasonable attempt to give notice, it shall declare a state of emergency and may issue without hearing an emergency special order directing the owner to cease such pollution immediately, and shall within 10 days hold a hearing, after reasonable notice as to the time and place thereof to the owner, to affirm, modify, amend or cancel such emergency special order. If the Board finds that an owner who has been issued a special order or an emergency special order is not complying with the terms thereof, it may proceed in accordance with § 10.1-1316 or 10.1-1320.

C. Any special order issued under the provisions of this section need not be filed with the Secretary of the Commonwealth, but the owner to whom such special order is directed shall be notified by certified mail, return receipt requested, sent to the last known address of such owner, or by personal delivery by an agent of the Board, and the time limits specified shall be counted from the date of receipt.

D. Nothing in this section or in § 10.1-1307 shall limit the Board's authority to proceed against such owner directly under § 10.1-1316 or 10.1-1320 without the prior issuance of an order, special or otherwise.

1971, Ex. Sess., c. 91, § 10-17.18:1; 1973, c. 251; 1988, c. 891; 2005, c. 706.

§ 10.1-1309.1. Special orders; penalties.

The Board is authorized to issue special orders in compliance with the Administrative Process Act (§ 2.2-4000 et seq.) requiring that an owner file with the Board a plan to abate, control, prevent, remove, or contain any substantial and imminent threat to public health or the environment that is reasonably likely to occur if such source ceases operations. Such plan shall also include a demonstration of financial capability to implement the plan. Financial capability may be demonstrated by the establishment of an escrow account, the creation of a trust fund to be maintained within the Department, submission of a bond, corporate guarantee based on audited financial statements, or such other instruments as the Board may deem appropriate. The Board may require that such plan and instruments be updated as appropriate. The Board shall give due consideration to any plan submitted by the owner in accordance with §§ 10.1-1410, 10.1-1428, and 62.1-44.15:1.1, in determining the necessity for and suitability of any plan submitted under this section.

For the purposes of this section, "ceases operation" means to cease conducting the normal operation of a source which is regulated under this chapter under circumstances where it would be reasonable to expect that such operation will not be resumed by the owner at the source. The term shall not include the sale or transfer of a source in the ordinary course of business or a permit transfer in accordance with Board regulations.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision thereof for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who ceases operations and who knowingly and willfully fails to implement a closure plan or to provide adequate funds for implementation of such plan shall, if such failure results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

1991, c. 702.

§ 10.1-1310. Decision of Board pursuant to hearing.

Any decision by the Board rendered pursuant to hearings under § 10.1-1309 shall be reduced to writing and shall contain the explicit findings of fact and conclusions of law upon which the Board's decision is based. Certified copies of the written decision shall be delivered or mailed by certified mail to the parties affected by it. Failure to comply with the provisions of this section shall render such decision invalid.

1971, Ex. Sess., c. 91, § 10-17.18:2; 1973, c. 251; 1988, c. 891.

§ 10.1-1310.1. Notification of local government.

Upon determining that there has been a violation of this chapter or any regulation promulgated under this chapter or order of the Board, and such violation poses an imminent threat to the health, safety or welfare of the public, the Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this section.

1988, cc. 434, 891; 1990, c. 238.

§ 10.1-1311. Penalties for noncompliance; judicial review.

A. The Board is authorized to promulgate regulations providing for the determination of a formula for the basis of the amount of any noncompliance penalty to be assessed by a court pursuant to subsection B hereof, in conformance with the requirements of Section 120 of the federal Clean Air Act, as amended, and any regulations promulgated thereunder. Any regulations promulgated pursuant to this section shall be in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Upon a determination of the amount by the Board, the Board shall petition the circuit court of the county or city wherein the owner subject to such noncompliance assessment resides, regularly or systematically conducts affairs or business activities, or where such owner's property affected by the administrative action is located for an order requiring payment of a noncompliance penalty in a sum the court deems appropriate.

C. Any order issued by a court pursuant to this section may be enforced as a judgment of the court. All sums collected, less the assessment and collection costs, shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

D. Any penalty assessed under this section shall be in addition to permits, fees, orders, payments, sanctions, or other requirements under this chapter, and shall in no way affect any civil or criminal enforcement proceedings brought under other provisions of this chapter.

1979, c. 65, § 10-17.18:3; 1988, c. 891; 1991, c. 718.

§ 10.1-1312. Air pollution control districts.

A. The Board may create, within any area of the Commonwealth, local air pollution control districts comprising a city or county or a part or parts of each, or two or more cities or counties, or any combination or parts thereof. Such local districts may be established by the Board on its own motion or upon request of the governing body or bodies of the area involved.

B. In each district there shall be a local air pollution control committee, the members of which shall be appointed by the Board from lists of recommended nominees submitted by the respective governing bodies of each locality, all or a portion of which are included in the district. The number of members on each committee shall be in the discretion of the Board. When a district includes two or more localities or portions thereof, the Board shall apportion the membership of the committee among the localities, provided that each locality shall have at least one representative on the committee. The members shall not be compensated out of state funds, but may be reimbursed for expenses out of state funds. Localities may provide for the payment of compensation and reimbursement of expenses to the members and may appropriate funds therefore. The portion of such payment to be borne by each locality shall be prescribed by agreement.

C. The local committee is empowered to observe compliance with the regulations of the Board and report instances of noncompliance to the Board, to conduct educational programs relating to air pollution and its effects, to assist the Department in its air monitoring programs, to initiate and make studies relating to air pollution and its effects, and to make recommendations to the Board.

D. The governing body of any locality, wholly or partially included within any such district, may appropriate funds for use by the local committee in air pollution control and studies.

1966, c. 497, § 10-17.19; 1969, Ex. Sess., c. 8; 1972, c. 781; 1988, c. 891.

§ 10.1-1313. State Advisory Board on Air Pollution.

The Board is authorized to name qualified persons to a State Advisory Board on Air Pollution.

1966, c. 497, § 10-17.20; 1985, c. 448; 1988, c. 891.

§ 10.1-1314. Owners to furnish plans, specifications and information.

Every owner which the Board has reason to believe is causing, or may be about to cause, an air pollution problem shall on request of the Board furnish such plans, specifications and information as may

be required by the Board in the discharge of its duties under this chapter. Any information, except emission data, as to secret processes, formulae or methods of manufacture or production shall not be disclosed in public hearing and shall be kept confidential. If samples are taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person from whom such sample is requested.

1966, c. 497, § 10-17.21; 1968, c. 311; 1975, c. 126; 1988, c. 891.

§ 10.1-1314.1. Protection of trade secrets.

Any information, except emissions data, reported to or otherwise obtained by the Director, the Board, or the agents or employees of either which contains or might reveal a trade secret shall be confidential and shall be limited to those persons who need such information for purposes of enforcement of this chapter or the federal Clean Air Act or regulations and orders of the Board. It shall be the duty of each owner to notify the Director or his representatives of the existence of trade secrets when he desires the protection provided herein.

1990, c. 238.

§ 10.1-1315. Right of entry.

Whenever it is necessary for the purposes of this chapter, the Board or any member, agent or employee thereof, when duly authorized by the Board, may at reasonable times enter any establishment or upon any property, public or private, to obtain information or conduct surveys or investigations.

1966, c. 497, § 10-17.22; 1988, c. 891.

§ 10.1-1316. Enforcement and civil penalties.

A. Any owner violating or failing, neglecting or refusing to obey any provision of this chapter, any Board regulation or order, or any permit condition may be compelled to comply by injunction, mandamus or other appropriate remedy.

B. Without limiting the remedies which may be obtained under subsection A, any owner violating or failing, neglecting or refusing to obey any Board regulation or order, any provision of this chapter, or any permit condition shall be subject, in the discretion of the court, to a civil penalty not to exceed $32,500 for each violation. Each day of violation shall constitute a separate offense. In determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the owner's business, the severity of the economic impact of the penalty on the business, and the seriousness of the violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into

the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any Board regulation or order, or any provision of this chapter, or any permit condition, the Board may provide, in any order issued by the Board against the owner, for the payment of civil charges in specific sums, not to exceed the limit of subsection B. Such civil charges shall be in lieu of any civil penalty which could be imposed under subsection B. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

D. The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

1966, c. 497, § 10-17.23; 1976, c. 622; 1978, c. 475; 1980, c. 378; 1988, c. 891; 1991, c. 718; 1993, c. 13; 2005, c. 706.

§ 10.1-1316.1. Severe ozone nonattainment areas; fees.

A. Except as provided in subsection C, any owner of a stationary source that emits or has the potential to emit 25 tons or more per year of volatile organic compounds or 25 tons or more of nitrogen oxides and is located in an area designated by the U.S. Environmental Protection Agency as a severe ozone nonattainment area shall pay a fee to the Department for deposit in the Vehicle Emissions Inspection Program Fund, established pursuant to § 46.2-1182.2 to be used for air quality evaluation and improvements, if the area fails to attain the ambient air quality standard for ozone by the applicable attainment date established pursuant to 42 U.S.C. §§ 7502 and 7511 of the Clean Air Act. Such fees shall be assessed for emissions in each calendar year beginning in the year after the attainment date and for each calendar year thereafter as set forth in this section and shall continue until the area is redesignated as an attainment area for the ozone standard.

B. The fee shall be determined in accordance with the following:

1. The fee shall equal $5,000, adjusted in accordance with subdivision B 3, per ton of volatile organic compounds or nitrogen oxides emitted by the stationary source during the previous calendar year in excess of 80 percent of the baseline amount, computed under subdivision B 2.

2. For purposes of this section, the baseline amount shall be the lower of (i) the amount of actual volatile organic compounds or nitrogen oxide emissions or (ii) the amount of volatile organic compounds or nitrogen oxide emissions allowed under the permit applicable to the stationary source during the attainment year, or, if no such permit has been issued for the attainment year, the amount of volatile organic compounds or nitrogen oxide emissions allowed under the applicable implementation plan

during the attainment year. The Department may calculate the baseline amount over a period of more than one calendar year, provided such determination is consistent with federal requirements.

3. The fee amount under subdivision B 1 shall be adjusted each year beginning in 1991 by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. The Consumer Price Index for any calendar year is the average of the Consumer Price Index for all urban consumers published by the U.S. Department of Labor as of the close of the 12-month period ending on August 31 of each calendar year. The revision of the Consumer Price Index that is most consistent with the Consumer Price Index for the calendar year 1989 shall be used.

C. Notwithstanding any provision of this section, no owner shall be required to pay any fee under subsection A with respect to emissions during any year that is treated as an extension year under 42 U.S.C. § 7511 (a)(5) of the Clean Air Act and no owner shall be required to pay any fee under subsection A if such fees would not otherwise be imposed pursuant to 42 U.S.C. § 7511d.

D. Payment is due by August 31 of each year. The Department shall issue annual notices of the fees to owners on or before August 1 of each year. Each notice shall include a summary of the data on which the fee is based. The Board may establish additional procedures for the assessment and collection of such fees. The failure to pay within 90 days from the receipt of the notice shall be grounds to institute a collection action against the owner of the stationary source.

E. Fees collected pursuant to this section shall not supplant or reduce the general fund appropriation to the Department.

F. These fees shall be used to pay expenses related to air quality monitoring and evaluation in the Commonwealth and measures to improve air quality in areas designated by the U.S. Environmental Protection Agency as severe nonattainment areas. The fees that may be generated may be used for matching grants.

2004, c. 408.

§ 10.1-1317. Judicial review of regulations of Board.

The validity of any regulation may be determined through judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

1971, Ex. Sess., c. 91, § 10-17.23:1; 1986, c. 615; 1988, c. 891.

§ 10.1-1318. Appeal from decision of Board.

A. Any owner aggrieved by a final decision of the Board under § 10.1-1309, § 10.1-1322 or subsection D of § 10.1-1307 is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

B. Any person who has participated, in person or by submittal of written comments, in the public comment process related to a final decision of the Board under § 10.1-1322 and who has exhausted all available administrative remedies for review of the Board's decision, shall be entitled to judicial review

of the Board's decision in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

1971, Ex. Sess., c. 91, § 10-17.23:2; 1986, c. 615; 1988, c. 891; 1993, c. 997; 1996, c. 1032.

§ 10.1-1319. Appeal to Court of Appeals.

The Commonwealth or any party aggrieved by any final decision of the judge shall have, regardless of the amount involved, the right to appeal to the Court of Appeals. The procedure shall be the same as that provided by law concerning appeals and supersedeas.

1966, c. 497, § 10-17.28; 1984, c. 703; 1988, c. 891.

§ 10.1-1320. Penalties; chapter not to affect right to relief or to maintain action.

Any owner knowingly violating any provision of this chapter, Board regulation or order, or any permit condition shall upon conviction be guilty of a misdemeanor and shall be subject to a fine of not more than $10,000 for each violation within the discretion of the court. Each day of violation shall constitute a separate offense.

Nothing in this chapter shall be construed to abridge, limit, impair, create, enlarge or otherwise affect substantively or procedurally the right of any person to damages or other relief on account of injury to persons or property.

1966, c. 497, § 10-17.29; 1972, c. 781; 1973, c. 251; 1988, c. 891; 1993, c. 13; 1995, c. 135.

§ 10.1-1320.1. Duty of attorney for the Commonwealth.

It shall be the duty of every attorney for the Commonwealth to whom the Director or his authorized representative has reported any violation of this chapter or any regulation or order of the Board, to cause proceedings to be prosecuted without delay for the fines and penalties in such cases.

1990, c. 238.

§ 10.1-1321. Local ordinances.

A. Existing local ordinances adopted prior to July 1, 1972, shall continue in force; however, in the event of a conflict between a Board regulation and a local ordinance adopted prior to July 1, 1972, the Board regulation shall govern, except when the conflicting local ordinance is more stringent.

B. The governing body of any locality proposing to adopt an ordinance, or an amendment to an existing ordinance, relating to air pollution after June 30, 1972, shall first obtain the approval of the Board as to the provisions of the ordinance or amendment. No ordinance or amendment, except an ordinance or amendment pertaining solely to open burning, shall be approved by the Board which reg-

ulates any emission source that is required to register with the Board or to obtain a permit pursuant to this chapter and the Board's regulations.

1966, c. 497, § 10-17.30; 1972, c. 781; 1988, c. 891; 1994, c. 358.

§ 10.1-1321.1. When application for permit considered complete.

A. No application for a permit for a new or major modified stationary air pollution source shall be considered complete unless the applicant has provided the Director with notification from the governing body of the county, city, or town in which the source is to be located that the location and operation of the source are consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2.

B. The governing body shall inform in writing the applicant and the Department of the source's compliance or noncompliance not more than forty-five days from receipt by the chief executive officer, or his agent, of a request from the applicant.

C. Should the governing body fail to provide written notification as specified in subsection B of this section, the requirement for such notification as specified in subsection A of this section is waived.

D. The provisions of this section shall apply only to applications received after July 1, 1990.

1990, c. 235; 1993, c. 739.

§ 10.1-1322. Permits.

A. Pursuant to regulations adopted by the Board and subject to § 10.1-1322.01, permits may be issued, amended, revoked or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations and orders of the Board under the provisions of this chapter. To the extent allowed by federal law, any person holding a permit who is intending to upgrade the permitted facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, will reduce the emissions of regulated air pollutants, and meets the requirements of Best Available Control Technology shall not be required to obtain a new, modified, or amended permit. The permit holder shall provide the demonstration anticipated by this subsection to the Department no later than 30 days prior to commencing construction.

B. The Board by regulation may prescribe and provide for the payment and collection of annual permit program fees for air pollution sources. Annual permit program fees shall not be collected until (i) the federal Environmental Protection Agency approves the Board's operating permit program established pursuant to Title V of the federal Clean Air Act or (ii) the Governor determines that such fees are needed earlier to maintain primacy over the program. The annual fees shall be based on the actual emissions (as calculated or estimated) of each regulated pollutant, as defined in § 502 of the federal Clean Air Act, in tons per year, not to exceed 4,000 tons per year of each pollutant for each source. The annual permit program fees shall not exceed a base year amount of $25 per ton using 1990 as

the base year, and shall be adjusted annually by the Consumer Price Index as described in § 502 of the federal Clean Air Act. Permit program fees for air pollution sources who receive state operating permits in lieu of Title V operating permits shall be paid in the first year and thereafter shall be paid biennially. The fees shall approximate the direct and indirect costs of administering and enforcing the permit program, and of administering the small business stationary source technical and environmental compliance assistance program as required by the federal Clean Air Act. The Board shall also collect permit application fee amounts not to exceed $30,000 from applicants for a permit for a new major stationary source. The permit application fee amount paid shall be credited towards the amount of annual fees owed pursuant to this section during the first two years of the source's operation. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

C. When adopting regulations for permit program fees for air pollution sources, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industry in the Commonwealth at a competitive disadvantage.

D. On or before January 1 of every even-numbered year, the Department shall make an evaluation of the implementation of the permit fee program and provide this evaluation in writing to the Senate Committee on Agriculture, Conservation and Natural Resources, the Senate Committee on Finance, the House Committee on Appropriations, the House Committee on Agriculture, Chesapeake and Natural Resources, and the House Committee on Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

E. To the extent allowed by federal law and regulations, priority for utilization of permit fees shall be given to cover the costs of processing permit applications in order to more efficiently issue permits.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

G. The permit fees shall apply to permit programs in existence on July 1, 1992, any additional permit programs that may be required by the federal government and administered by the Board, or any new permit program required by the Code of Virginia.

H. The permit program fee regulations promulgated pursuant to this section shall not become effective until July 1, 1993.

I. [Expired.]

1978, c. 818, § 10-17.30:1; 1988, c. 891; 1992, c. 488; 1993, c. 711; 1994, c. 227; 1995, c. 158; 2004, cc. 249, 324; 2005, c. 633; 2008, cc. 276, 557; 2012, c. 581.

§ 10.1-1322.01. Permits; procedures for public hearings and permits before the Board.

A. During the public comment period on a permit action, interested persons may request a public hearing to contest such action or the terms and conditions thereof. Where public hearings are mandatory under state or federal law or regulation, interested persons may request, during the public comment period on the permit action, that the Board consider the permit action pursuant to the requirements of this section.

B. Requests for a public hearing or Board consideration shall contain the following information:

1. The name, mailing address, and telephone number of the requester;

2. The names and addresses of all persons for whom the requester is acting as a representative (for the purposes of this requirement, an unincorporated association is a person);

3. The reason why a public hearing or Board consideration is requested;

4. A brief, informal statement setting forth the factual nature and the extent of the interest of the requester or of the persons for whom the requester is acting as representative in the application or tentative determination, including an explanation of how and to what extent such interest would be directly and adversely affected by the issuance, denial, modification, or revocation of the permit in question; and

5. Where possible, specific references to the terms and conditions of the permit in question, together with suggested revisions and alterations of those terms and conditions that the requester considers are needed to conform the permit to the intent and provisions of the State Air Pollution Control Law (§ 10.1-1300 et seq.).

C. Upon completion of the public comment period on a permit action, the Director shall review all timely requests for public hearing or Board consideration filed during the public comment period on the permit action and within 30 calendar days following the expiration of the time period for the submission of requests shall grant a public hearing or Board consideration after the public hearing required by state or federal law or regulation, unless the permittee or applicant agrees to a later date, if the Director finds the following:

1. That there is a significant public interest in the issuance, denial, modification, or revocation of the permit in question as evidenced by receipt of a minimum of 25 individual requests for a public hearing or Board consideration;

2. That the requesters raise substantial, disputed issues relevant to the issuance, denial, modification, or revocation of the permit in question; and

3. That the action requested by the interested party is not on its face inconsistent with, or in violation of, the State Air Pollution Control Law (§ 10.1-1300 et seq.), federal law or any regulation promulgated thereunder.

D. Either the Director or a majority of the Board members, acting independently, may request a meeting of the Board to be convened within 20 days of the Director's decision pursuant to subsection C in

order to review such decision and determine by a majority vote of the Board whether or not to grant a public hearing or Board consideration, or to delegate the permit to the Director for his decision.

For purposes of this subsection, if a Board meeting is held via electronic communication means, the meeting shall be held in compliance with the provisions of § 2.2-3708.2, except that a quorum of the Board is not required to be physically assembled at one primary or central meeting location. Discussions of the Board held via such electronic communication means shall be specifically limited to a (i) review of the Director's decision pursuant to subsection C, (ii) determination of the Board whether or not to grant a public hearing or Board consideration, or (iii) delegation of the permit to the Director for his decision. No other matter of public business shall be discussed or transacted by the Board during any such meeting held via electronic communication means.

E. The Director shall, forthwith, notify by mail at his last known address (i) each requester and (ii) the applicant or permittee of the decision to grant or deny a public hearing or Board consideration.

F. In addition to subsections C, D, and E, the Director may, in his discretion, convene a public hearing on a permit action or submit a permit action to the Board for its consideration.

G. If a determination is made to hold a public hearing, the Director shall schedule the hearing at a time between 45 and 75 days after mailing of the notice required by subsection E.

H. The Director shall cause, or require the applicant to publish, notice of a public hearing to be published once, in a newspaper of general circulation in the city or county where the facility or operation that is the subject of the permit or permit application is located, at least 30 days before the hearing date.

I. The Director may, on his own motion or at the request of the applicant or permittee, for good cause shown, reschedule the date of the public hearing. In the event the Director reschedules the date for the public hearing after notice has been published, he shall, or require the applicant to, provide reasonable notice of the new date of the public hearing. Such notice shall be published once in the same newspaper where the original notice was published.

J. Public hearings held pursuant to these procedures may be conducted by (i) the Board at a regular or special meeting of the Board or (ii) one or more members of the Board. A member of the Board shall preside over the public hearing.

K. The presiding Board member shall have the authority to maintain order, preserve the impartiality of the decision process, and conclude the hearing process expeditiously. The presiding Board member, in order to carry out his responsibilities under this subsection, is authorized to exercise the following powers, including but not limited to:

1. Prescribing the methods and procedures to be used in the presentation of factual data, arguments, and proof orally and in writing including the imposition of reasonable limitations on the time permitted for oral testimony;

2. Consolidating the presentation of factual data, arguments, and proof to avoid repetitive presentation of them;

3. Ruling on procedural matters; and

4. Acting as custodian of the record of the public hearing causing all notices and written submittals to be entered in it.

L. The public comment period will remain open for 15 days after the close of the public hearing if required by § 10.1-1307.01.

M. When the public hearing is conducted by less than a quorum of the Board, the Department shall, promptly after the close of the public hearing comment period, make a report to the Board.

N. After the close of the public hearing comment period, the Board shall, at a regular or special meeting, take final action on the permit. Such decision shall be issued within 90 days of the close of the public comment period or from a later date, as agreed to by the permittee or applicant and the Board or the Director. The Board shall not take any action on a permit where a public hearing was convened solely to satisfy the requirements of state or federal law or regulation unless the permit was provided to the Board for its consideration pursuant to the provisions of this section.

O. When the public hearing was conducted by less than a quorum of the Board, persons who commented during the public comment period shall be afforded an opportunity at the Board meeting when final action is scheduled to respond to any summaries of the public comments prepared by the Department for the Board's consideration subject to such reasonable limitations on the time permitted for oral testimony or presentation of repetitive material as are determined by the Board.

P. In making its decision, the Board shall consider (i) the verbal and written comments received during the public comment period made part of the record, (ii) any explanation of comments previously received during the public comment period made at the Board meeting, (iii) the comments and recommendation of the Department, and (iv) the agency files. When the decision of the Board is to adopt the recommendation of the Department, the Board shall provide in writing a clear and concise statement of the legal basis and justification for the decision reached. When the decision of the Board varies from the recommendation of the Department, the Board shall, in consultation with legal counsel, provide a clear and concise statement explaining the reason for the variation and how the Board's decision is in compliance with applicable laws and regulations. The written statement shall be provided contemporaneously with the decision of the Board. Copies of the decision, certified by the Director, shall be mailed by certified mail to the permittee or applicant.

2008, cc. 276, 557; 2009, c. 627; 2018, c. 55.

§ 10.1-1322.1. Air Pollution Permit Program Fund established; use of moneys.

A. Notwithstanding the provisions of § 2.2-1802, all moneys collected pursuant to §§ 10.1-1322 and 10.1-1322.2 shall be paid into the state treasury and credited to a special nonreverting fund known as the Air Pollution Permit Program Fund, which is hereby established.

B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

C. The Department of Air Pollution Control is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes of carrying out the provisions of this chapter under the direction of the Executive Director.

D. An accounting of moneys received by and distributed from the permit fund shall be kept by the Comptroller and furnished upon request to the Governor or the General Assembly.

1992, c. 488.

§ 10.1-1322.2. Preliminary program permit fees.

A. Prior to the adoption and implementation of a permit fee schedule as authorized under subsection B of § 10.1-1322, the owners of sources of air pollution which are registered by the Department in accordance with the regulations of the Board are assessed preliminary program permit fees on an annual basis in accordance with subsection C of this section. These fees shall be deposited in the Air Pollution Permit Program Fund established by § 10.1-1322.1. The Department shall issue annual notices of the fees to owners of registered sources on or before August 1 of each fiscal year. Each notice of a fee shall include a summary of the data on which the fee is based. Fees shall be payable thirty days after receipt of notice. Failure to make timely payment within ninety days shall be grounds to institute a collection action against the owner of the registered source by the Attorney General.

B. The provisions of this section shall be applicable to all owners in cases where the aggregate of all pollutants emitted (as calculated or estimated) by all sources owned or controlled by the same owner, or by any entity controlling, controlled by, or under common control with such owner, are greater than 500 tons per year. Any individual stationary source with actual emissions (as calculated or estimated) of less than 100 tons per year shall not be subject to a fee under subsection C of this section. Determination of the tons per year of air pollution shall be based on all actual pollutants emitted during the prior calendar year.

C. The Department shall assess preliminary program permit fees uniformly, based on the aggregate of all pollutants emitted (as calculated or estimated) during the calendar year immediately preceding the fiscal year, in an amount calculated to produce revenue totaling $3.1 million. In no instance shall a preliminary fee assessed in any calendar year exceed $100,000 per source. The establishment of a fee schedule under this subsection shall be exempt from the provisions of Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2.

D. Notices of preliminary program permit fees shall not be issued for any fiscal year in which the fees for the operating permit program are in effect in accordance with regulations adopted pursuant to subsection B of § 10.1-1322. Should a permit program fee become due and payable during a fiscal year when the owner has paid a preliminary program permit fee, the permit program fee shall be reduced in an amount equal to the pro rata share of the preliminary program permit fee for the months remaining

in the fiscal year. The pro rata share is determined by dividing the fee into twelve equal parts and multiplying that sum by the number of months remaining in the fiscal year.

E. Utilization of the fees collected pursuant to this section shall be limited to the agency's direct and indirect costs of processing permits in order to more efficiently issue permits and to prepare for and begin implementation of the federal Clean Air Act requirements. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

F. Fees collected pursuant to this section shall not supplant or reduce in any way the general fund appropriation to the Department.

1992, c. 488.

§ 10.1-1322.3. Emissions trading programs; emissions credits; Board to promulgate regulations.
In accordance with § 10.1-1308, the Board may promulgate regulations to provide for emissions trading programs to achieve and maintain the National Ambient Air Quality Standards established by the United States Environmental Protection Agency, under the federal Clean Air Act. The regulations shall create an air emissions banking and trading program for the Commonwealth, to the extent not prohibited by federal law, that results in net air emission reductions, creates an economic incentive for reducing air emissions, and allows for continued economic growth through a program of banking and trading credits or allowances. The regulations applicable to the electric power industry shall foster competition in the electric power industry, encourage construction of clean, new generating facilities, provide without charge new source set-asides of five percent for the first five plan years and two percent per year thereafter, and provide an initial allocation period of five years. In promulgating such regulations the Board shall consider, but not be limited to, the inclusion of provisions concerning (i) the definition and use of emissions reduction credits or allowances from mobile and stationary sources, (ii) the role of offsets in emissions trading, (iii) interstate or regional emissions trading, (iv) the mechanisms needed to facilitate emissions trading and banking, and (v) the role of emissions allocations in emissions trading. No regulations shall prohibit the direct trading of air emissions credits or allowances between private industries, provided such trades do not adversely impact air quality in Virginia.

1994, c. 204; 1999, c. 1022; 2001, c. 580; 2004, c. 334.

§ 10.1-1322.4. Permit modifications for alternative fuels or raw materials.
Unless required by federal law or regulation, no additional permit or permit modifications shall be required by the Board for the use, by any source, of an alternative fuel or raw material, if the owner demonstrates to the Board that as a result of trial burns at his facility or other facilities or other sufficient data that the emissions resulting from the use of the alternative fuel or raw material supply are decreased. To the extent allowed by federal law or regulation, no demonstration shall be required for the use of processed animal fat, processed fish oil, processed vegetable oil, distillate oil, or any mixture thereof in place of the same quantity of residual oil to fire industrial boilers.

1994, c. 717; 2008, c. 282.

Article 2 - SMALL BUSINESS TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM

§ 10.1-1323. Small business stationary source technical and environmental compliance assistance program.

A. There is hereby created within the Department a small business stationary source technical and environmental compliance assistance program to facilitate compliance by small business stationary sources with the provisions of the federal Clean Air Act. The program shall be administered by the Department.

B. Except as provided in subsections C and D of this section, any stationary source is eligible for the program that:

1. Is owned or operated by a person that employs 100 or fewer individuals;

2. Is a small business concern as defined in the federal Small Business Act;

3. Is not a major stationary source;

4. Does not emit fifty tons or more per year of any regulated pollutant; and

5. Emits less than seventy-five tons per year of all regulated pollutants.

C. Upon petition by a source owner, the Board may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subdivision B 3, B 4 or B 5 of this section but which does not emit more than 100 tons per year of all regulated pollutants.

D. The Board, in consultation with the Administrator of the United States Environmental Protection Agency and the Administrator of the United States Small Business Administration and after providing notice and opportunity for public hearing, may exclude as a small business stationary source for purposes of this article any category or subcategory of sources that the Board determines to have sufficient technical and financial capabilities to meet the requirements of the federal Clean Air Act without the application of this section.

1992, c. 303.

§ 10.1-1324. Office of Small Business Ombudsman created.

An Office of Small Business Ombudsman is hereby created within the Department. The Office shall be headed by an ombudsman appointed by the Executive Director. The Small Business Ombudsman shall provide direct oversight of the small business stationary source technical and environmental compliance assistance program.

1992, c. 303.

§ 10.1-1325. Small Business Environmental Compliance Advisory Panel created; membership; terms; compensation and expenses.

The Small Business Environmental Compliance Advisory Panel (the Panel) is hereby established as an advisory panel in the executive branch of state government. It shall be composed of seven members appointed for four years or until their successors have been appointed. 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. Appointments shall be made in compliance with the Clean Air Act pursuant to 42 U.S.C. § 7661f, as amended, as follows:

1. Two members, who are not owners, or representatives of owners, of small business stationary sources, appointed by the Governor to represent the general public;

2. Two members appointed by the House of Delegates who are owners, or who represent owners, of small business stationary sources (one member each by the Speaker of the House of Delegates and Minority Leader of the House of Delegates);

3. Two members appointed by the Senate who are owners, or who represent owners, of small business stationary sources (one member each by the Majority and Minority Leaders of the Senate); and

4. One member appointed by the Executive Director.

Members of Panel shall receive no compensation for their service, but shall be entitled to reimbursement 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 expenses of the members shall be paid from such funds as may be available under Subchapter V (42 U.S.C. § 7661 et seq.) of the Clean Air Act, as amended.

1992, c. 303; 2004, c. 1000.

§ 10.1-1326. Duties of the Advisory Board.

The Small Business Environmental Compliance Advisory Board shall:

1. Render advisory opinions concerning the effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

2. Make periodic reports to the General Assembly and the Administrator of the U.S. Environmental Protection Agency concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the federal Paperwork Reduction Act, the federal Regulatory Flexibility Act, and the federal Equal Access to Justice Act;

3. Review information for small business stationary sources to ensure that such information is understandable by the layperson; and

4. Develop and disseminate reports and advisory opinions through the Office of Small Business Ombudsman.

1992, c. 303.

Article 3 - AIR EMISSIONS CONTROL

§§ 10.1-1327, 10.1-1328. Repealed.

Repealed by Acts 2011, c. 291, cl. 1.

Article 4 - Clean Energy and Community Flood Preparedness Act

§ 10.1-1329. Definitions.

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

"Allowance" means an authorization to emit a fixed amount of carbon dioxide.

"Allowance auction" means an auction in which the Department or its agent offers allowances for sale.

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

"DMME" means the Department of Mines, Minerals and Energy.

"Energy efficiency program" has the same meaning as provided in § 56-576.

"Fund" means the Virginia Community Flood Preparedness Fund created pursuant to § 10.1-603.25.

"Housing development" means the same as that term is defined in § 36-141.

"Regional Greenhouse Gas Initiative" or "RGGI" means the program to implement the memorandum of understanding between signatory states dated December 20, 2005, and as may be amended, and the corresponding model rule that established a regional carbon dioxide electric power sector cap and trade program.

"Secretary" means the Secretary of Natural Resources.

2020, cc. 1219, 1280.

§ 10.1-1330. Clean Energy and Community Flood Preparedness.

A. The provisions of this article shall be incorporated by the Department, without further action by the Board, into the final regulation adopted by the Board on April 19, 2019, and published in the Virginia Register on May 27, 2019. Such incorporation by the Department shall be exempt from the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

B. The Director is hereby authorized to establish, implement, and manage an auction program to sell allowances into a market-based trading program consistent with the RGGI program and this article. The Director shall seek to sell 100 percent of all allowances issued each year through the allowance auction, unless the Department finds that doing so will have a negative impact on the value of allowances and result in a net loss of consumer benefit or is otherwise inconsistent with the RGGI program.

C. To the extent permitted by Article X, Section 7 of the Constitution of Virginia, the state treasury shall (i) hold the proceeds recovered from the allowance auction in an interest-bearing account with all interest directed to the account to carry out the purposes of this article and (ii) use the proceeds without further appropriation for the following purposes:

1. Forty-five percent of the revenue shall be credited to the account established pursuant to the Fund for the purpose of assisting localities and their residents affected by recurrent flooding, sea level rise, and flooding from severe weather events.

2. Fifty percent of the revenue shall be credited to an account administered by DHCD to support low-income energy efficiency programs, including programs for eligible housing developments. DHCD shall review and approve funding proposals for such energy efficiency programs, and DMME shall provide technical assistance upon request. Any sums remaining within the account administered by DHCD, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in such account to support low-income energy efficiency programs.

3. Three percent of the revenue shall be used to (i) cover reasonable administrative expenses of the Department in the administration of the revenue allocation, carbon dioxide emissions cap and trade program, and auction and (ii) carry out statewide climate change planning and mitigation activities.

4. Two percent of the revenue shall be used by DHCD, in partnership with DMME, to administer and implement low-income energy efficiency programs pursuant to subdivision 2.

D. The Department, the Department of Conservation and Recreation, DHCD, and DMME shall prepare a joint annual written report describing the Commonwealth's participation in RGGI, the annual reduction in greenhouse gas emissions, the revenues collected and deposited in the interest-bearing account maintained by the Department pursuant to this article, and a description of each way in which money was expended during the fiscal year. The report shall be submitted to the Governor and General Assembly by January 1, 2022, and annually thereafter.

2020, cc. 1219, 1280.

§ 10.1-1331. Energy conversion or energy tolling agreements.

If the Governor seeks to include the Commonwealth as a full participant in RGGI or another carbon trading program with an open auction of allowances, or if the Department implements the final carbon trading regulation as approved by the Board on April 19, 2019, (the Final Regulation) in order to establish a carbon dioxide cap and trade program that limits and reduces the total carbon dioxide emissions released by certain electric generation facilities and that complies with the RGGI model rule, then (i) the definition of the term "life-of-the-unit contractual arrangement" under the Final Regulation shall include any energy conversion or energy tolling agreement that has a primary term of 20 years or more and pursuant to which the purchaser is required to deliver fuel to the CO2 budget source or CO2 budget unit and is entitled to receive all of the nameplate capacity and associated energy generated by such source or unit for the entire contractual period and (ii) any purchaser under an energy conversion or energy tolling agreement shall be responsible for acquiring any CO2 allowances required under the Final Regulation in relation to a CO2 budget source or CO2 budget unit that is subject to such agreement.

2020, cc. 1219, 1280.

Chapter 14 - Virginia Waste Management Act

Article 1 - GENERAL PROVISIONS

§ 10.1-1400. Definitions.

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

"Applicant" means any and all persons seeking or holding a permit required under this chapter.

"Board" means the Virginia Waste Management Board.

"Composting" means the manipulation of the natural aerobic process of decomposition of organic materials to increase the rate of decomposition.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

"Disclosure statement" means a sworn statement or affirmation, in such form as may be required by the Director, which includes:

1. The full name and business address of all key personnel;

2. The full name and business address of any entity, other than a natural person, that collects, transports, treats, stores, or disposes of solid waste or hazardous waste in which any key personnel holds an equity interest of five percent or more;

3. A description of the business experience of all key personnel listed in the disclosure statement;

4. A listing of all permits or licenses required for the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste issued to or held by any key personnel within the past 10 years;

5. A listing and explanation of any notices of violation, prosecutions, administrative orders (whether by consent or otherwise), license or permit suspensions or revocations, or enforcement actions of any sort by any state, federal or local authority, within the past 10 years, which are pending or have concluded with a finding of violation or entry of a consent agreement, regarding an allegation of civil or criminal violation of any law, regulation or requirement relating to the collection, transportation, treatment, storage or disposal of solid waste or hazardous waste by any key personnel, and an itemized list of all convictions within 10 years of key personnel of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1; racketeering; or violation of antitrust laws;

6. A listing of all agencies outside the Commonwealth which have regulatory responsibility over the applicant or have issued any environmental permit or license to the applicant within the past 10 years, in connection with the applicant's collection, transportation, treatment, storage, or disposal of solid waste or hazardous waste;

7. Any other information about the applicant and the key personnel that the Director may require that reasonably relates to the qualifications and ability of the key personnel or the applicant to lawfully and competently operate a solid waste management facility in Virginia; and

8. The full name and business address of any member of the local governing body or planning commission in which the solid waste management facility is located or proposed to be located, who holds an equity interest in the facility.

"Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"Equity" includes both legal and equitable interests.

"Federal acts" means any act of Congress providing for waste management and regulations promulgated thereunder.

"Hazardous material" means a substance or material in a form or quantity which may pose an unreasonable risk to health, safety or property when transported, and which the Secretary of Transportation of the United States has so designated by regulation or order.

"Hazardous substance" means a substance listed under United States Public Law 96-510, entitled the Comprehensive Environmental Response Compensation and Liability Act.

"Hazardous waste" means a solid waste or combination of solid waste which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating illness; or

2. Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

"Hazardous waste generation" means the act or process of producing hazardous waste.

"Household hazardous waste" means any waste material derived from households (including single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas) which, except for the fact that it is derived from a household, would be classified as a hazardous waste, including but not limited to, nickel, cadmium, mercuric oxide, manganese, zinc-carbon or lead batteries; solvent-based paint, paint thinner, paint strippers, or other paint solvents; any product containing trichloroethylene, toxic art supplies, used motor oil and unusable gasoline or kerosene, fluorescent or high intensity light bulbs, ammunition, fireworks,

banned pesticides, or restricted-use pesticides as defined in § 3.2-3900. All empty household product containers and any household products in legal distribution, storage or use shall not be considered household hazardous waste.

"Key personnel" means the applicant itself and any person employed by the applicant in a managerial capacity, or empowered to make discretionary decisions, with respect to the solid waste or hazardous waste operations of the applicant in Virginia, but shall not include employees exclusively engaged in the physical or mechanical collection, transportation, treatment, storage, or disposal of solid or hazardous waste and such other employees as the Director may designate by regulation. If the applicant has not previously conducted solid waste or hazardous waste operations in Virginia, the term also includes any officer, director, partner of the applicant, or any holder of five percent or more of the equity or debt of the applicant. If any holder of five percent or more of the equity or debt of the applicant or of any key personnel is not a natural person, the term includes all key personnel of that entity, provided that where such entity is a chartered lending institution or a reporting company under the Federal Securities Exchange Act of 1934, the term does not include key personnel of such entity. Provided further that the term means the chief executive officer of any agency of the United States or of any agency or political subdivision of the Commonwealth, and all key personnel of any person, other than a natural person, that operates a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste under contract with or for one of those governmental entities.

"Manifest" means the form used for identifying the quantity, composition, origin, routing and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment or storage of such hazardous waste.

"Mixed radioactive waste" means radioactive waste that contains a substance which renders the mixture a hazardous waste.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped or spilled so as to create a nuisance or present a threat of a release of harmful substances into the environment or present a hazard to human health.

"Person" includes an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity.

"Radioactive waste" or "nuclear waste" includes:

1. "Low-level radioactive waste" material that:

a. Is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 11(e)(2) of the Atomic Energy Act of 1954 (42 U.S.C. § 2014(e)(2)); and

b. The Nuclear Regulatory Commission, consistent with existing law, classifies as low-level radioactive waste; or

2. "High-level radioactive waste" which means:

a. The highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and

b. Other highly radioactive material that the Nuclear Regulatory Commission, consistent with existing law, determines by rule requires permanent isolation.

"Recycling residue" means the (i) nonmetallic substances, including but not limited to plastic, rubber, and insulation, which remain after a shredder has separated for purposes of recycling the ferrous and nonferrous metal from a motor vehicle, appliance, or other discarded metallic item and (ii) organic waste remaining after removal of metals, glass, plastics and paper which are to be recycled as part of a resource recovery process for municipal solid waste resulting in the production of a refuse derived fuel.

"Resource conservation" means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption and utilization of recovered resources.

"Resource recovery" means the recovery of material or energy from solid waste.

"Resource recovery system" means a solid waste management system which provides for collection, separation, recycling and recovery of solid wastes, including disposal of nonrecoverable waste residues.

"Sanitary landfill" means a disposal facility for solid waste so located, designed and operated that it does not pose a substantial present or potential hazard to human health or the environment, including pollution of air, land, surface water or ground water.

"Sludge" means any solid, semisolid or liquid wastes with similar characteristics and effects generated from a public, municipal, commercial or industrial wastewater treatment plant, water supply treatment plant, air pollution control facility or any other waste producing facility.

"Solid waste" means any garbage, refuse, sludge and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from industrial, commercial, mining and agricultural operations, or community activities but does not include (i) solid or dissolved material in domestic sewage, (ii) solid or dissolved material in irrigation return flows or in industrial discharges which are sources subject to a permit from the State Water Control Board, or (iii) source, special nuclear, or by-product material as defined by the Federal Atomic Energy Act of 1954, as amended.

"Solid waste management facility" means a site used for planned treating, long term storage, or disposing of solid waste. A facility may consist of several treatment, storage, or disposal units.

"Transport" or "transportation" means any movement of property and any packing, loading, unloading or storage incidental thereto.

"Treatment" means any method, technique or process, including incineration or neutralization, designed to change the physical, chemical or biological character or composition of any waste to

neutralize it or to render it less hazardous or nonhazardous, safer for transport, amenable to recovery or storage or reduced in volume.

"Vegetative waste" means decomposable materials generated by yard and lawn care or land-clearing activities and includes, but is not limited to, leaves, grass trimmings, and woody wastes such as shrub and tree prunings, bark, limbs, roots, and stumps.

"Waste" means any solid, hazardous or radioactive waste as defined in this section.

"Waste management" means the collection, source separation, storage, transportation, transfer, processing, treatment and disposal of waste or resource recovery.

"Yard waste" means decomposable waste materials generated by yard and lawn care and includes leaves, grass trimmings, brush, wood chips, and shrub and tree trimmings. Yard waste shall not include roots or stumps that exceed six inches in diameter.

1986, c. 492, §§ 10-264, 10-268; 1987, c. 120; 1988, cc. 117, 891; 1990, cc. 499, 781, 919; 1993, cc. 214, 215, 496; 1996, c. 236; 1997, c. 294; 2001, c. 569; 2003, c. 620; 2009, c. 27.

§ 10.1-1400.1. Certified mail; subsequent mail or notices may be sent by regular mail.
Whenever in this chapter the Board, the Department, or the Director 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 Board, the Department, or the Director may be sent by regular mail.

2011, c. 566.

§ 10.1-1401. Virginia Waste Management Board continued.
A. The Virginia Waste Management Board shall consist of seven Virginia residents appointed by the Governor for terms of four years. The members of the Board shall be citizens of the Commonwealth and shall be selected from the Commonwealth at large on the basis of merit without regard to political affiliation. Members shall, by their education, training, or experience, be knowledgeable of waste management and shall be fairly representative of agriculture, conservation, industry, and public health. Vacancies occurring other than by expiration of a term shall be filled by the Governor for the unexpired portion of the term.

B. The Board shall adopt rules and procedures for the conduct of its business.

C. The Board shall elect a chairman from among its members.

D. A quorum shall consist of four members. The decision of a majority of those present and voting shall constitute a decision of the Board; however, a vote of the majority of the Board membership is required to constitute a final decision on certification of site approval. Meetings may be held at any time or place determined by the Board or upon call of the chairman or upon written request of any two members. All members shall be notified of the time and place of any meeting at least five days in advance of the meeting.

1986, c. 492, § 10-265; 1988, c. 891; 1994, c. 461; 2008, cc. 276, 557.

§ 10.1-1402. Powers and duties of the Board.

The Board shall carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. Supervise and control waste management activities in the Commonwealth.

2. Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, and other state and federal agencies for the purpose of implementing this chapter and the federal acts.

3. Provide technical assistance and advice concerning all aspects of waste management.

4. Develop and keep current state waste management plans and provide technical assistance, advice and other aid for the development and implementation of local and regional waste management plans.

5. Promote the development of resource conservation and resource recovery systems and provide technical assistance and advice on resource conservation, resource recovery and resource recovery systems.

6. Collect data necessary to conduct the state waste programs, including data on the identification of and amounts of waste generated, transported, stored, treated or disposed, and resource recovery.

7. Require any person who generates, collects, transports, stores or provides treatment or disposal of a hazardous waste to maintain records, manifests and reporting systems required pursuant to federal statute or regulation.

8. Designate, in accordance with criteria and listings identified under federal statute or regulation, classes, types or lists of waste that it deems to be hazardous.

9. Consult and coordinate with the heads of appropriate state and federal agencies, independent regulatory agencies and other governmental instrumentalities for the purpose of achieving maximum effectiveness and enforcement of this chapter while imposing the least burden of duplicative requirements on those persons subject to the provisions of this chapter.

10. Apply for federal funds and transmit such funds to appropriate persons.

11. Promulgate and enforce regulations, and provide for reasonable variances and exemptions necessary to carry out its powers and duties and the intent of this chapter and the federal acts, except that a description of provisions of any proposed regulation which are more restrictive than applicable federal requirements, together with the reason why the more restrictive provisions are needed, shall be provided to the standing committee of each house of the General Assembly to which matters relating to the content of the regulation are most properly referable.

12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1, grant, gift, devise or otherwise, the fee simple title to any lands, selected in the discretion of the Board as constituting necessary and appropriate sites to be used for the management of hazardous waste as defined in this chapter, including lands adjacent to the site as the Board may deem necessary or suitable for restricted areas. In all

instances the Board shall dedicate lands so acquired in perpetuity to such purposes. In its selection of a site pursuant to this subdivision, the Board shall consider the appropriateness of any state-owned property for a disposal site in accordance with the criteria for selection of a hazardous waste management site.

13. Assume responsibility for the perpetual custody and maintenance of any hazardous waste management facilities.

14. Collect, from any person operating or using a hazardous waste management facility, fees sufficient to finance such perpetual custody and maintenance due to that facility as may be necessary. All fees received by the Board pursuant to this subdivision shall be used exclusively to satisfy the responsibilities assumed by the Board for the perpetual custody and maintenance of hazardous waste management facilities.

15a. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility or any person transporting hazardous waste, permit fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to implement this subdivision. All fees received by the Board pursuant to this subdivision shall be used exclusively for the hazardous waste management program set forth herein.

15b. Collect fees from large quantity generators of hazardous wastes.

16. Collect, from any person operating or proposing to operate a sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste: (i) permit application fees sufficient to defray only costs related to the issuance, reissuance, amendment or modification of permits as required in this chapter in accordance with Board regulations, but such fees shall not exceed costs necessary to issue, reissue, amend or modify such permits and (ii) annual fees established pursuant to § 10.1-1402.1:1. All such fees received by the Board shall be used exclusively for the solid waste management program set forth herein. The Board shall establish a schedule of fees by regulation as provided in §§ 10.1-1402.1, 10.1-1402.2 and 10.1-1402.3.

17. Issue, deny, amend and revoke certification of site suitability for hazardous waste facilities in accordance with this chapter.

18. Make separate orders and regulations it deems necessary to meet any emergency to protect public health, natural resources and the environment from the release or imminent threat of release of waste.

19. Take actions to contain or clean up any site or to issue orders to require cleanup of any site where (i) solid or hazardous waste, or another substance within the jurisdiction of the Board, has been improperly managed or (ii) an open dump has been created, and to institute legal proceedings to recover the costs of the containment or clean-up activities from any responsible party. Such responsible party shall include any party, including the owner or operator or any other person, who caused the

site to become an open dump or who caused or arranged for the improper management of such solid or hazardous waste or other substance within the jurisdiction of the Board.

20. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste laws and regulations or court orders pertaining thereto pursuant to subdivision 19 of this section for the purpose of responding to solid or hazardous waste incidents and clean-up of sites that have been improperly managed, including sites eligible for a joint federal and state remedial project under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and for investigations to identify parties responsible for such mismanagement.

21. Abate hazards and nuisances dangerous to public health, safety or the environment, both emergency and otherwise, created by the improper disposal, treatment, storage, transportation or management of substances within the jurisdiction of the Board.

22. Notwithstanding any other provision of law to the contrary, regulate the management of mixed radioactive waste.

23. [Expired.]

1986, cc. 492, 566, § 10-266; 1987, c. 122; 1988, cc. 117, 891; 1990, cc. 499, 919; 1991, c. 718; 1992, c. 853; 1993, c. 456; 2003, c. 940; 2004, cc. 249, 324; 2006, cc. 16, 163; 2020, c. 621.

§ 10.1-1402.01. Further duties of Board; localities particularly affected.

After June 30, 1994, before promulgating any regulation under consideration or granting any variance to an existing regulation, or issuing any treatment, storage, or disposal permit, except for an emergency permit, if the Board finds that there are localities particularly affected by the regulation, variance or permit, the Board shall:

1. Publish, or require the applicant to publish, a notice in a local paper of general circulation in the localities affected at least thirty days prior to the close of any public comment period. Such notice shall contain a statement of the estimated local impact of the proposed action, which at a minimum shall include information on the location and type of waste treated, stored or disposed.

2. Mail the notice to the chief elected official and chief administrative officer and planning district commission for those localities.

Written comments shall be accepted by the Board for at least fifteen days after any hearing on the regulation, variance, or permit, unless the Board votes to shorten the period.

For the purposes of this section, the term "locality particularly affected" means any locality which bears any identified disproportionate material environmental impact which would not be experienced by other localities. For the purposes of this section, the transportation of waste shall not constitute a material environmental impact.

1993, c. 944.

§ 10.1-1402.02. Use, reuse, or reclamation of coal combustion by-product in a flood plain.

Notwithstanding any other provision of this article, for any project proposed after July 1, 2009, the Board shall not exclude or exempt from the definition of solid waste or any solid waste permitting requirements the use, reuse, or reclamation of unamended coal combustion by-product in an area designated as a 100-year flood plain as defined in § 10.1-600.

2009, cc. 348, 498.

§ 10.1-1402.03. Closure of certain coal combustion residuals units.

A. For the purposes of this section only:

"Carrying cost" means the cost associated with financing expenditures incurred but not yet recovered from the electric utility's customers, and shall be calculated by applying the electric utility's weighted average cost of debt and equity capital, as determined by the State Corporation Commission, with no additional margin or profit, to any unrecovered balances.

"CCR landfill" means an area of land or an excavation that receives CCR and is not a surface impoundment, underground injection well, salt dome formation, salt bed formation, underground or surface coal mine, or cave and that is owned or operated by an electric utility.

"CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area that (i) is designed to hold an accumulation of CCR and liquids; (ii) treats, stores, or disposes of CCR; and (iii) is owned or operated by an electric utility.

"CCR unit" means any CCR landfill, CCR surface impoundment, lateral expansion of a CCR unit, or combination of two or more such units that is owned by an electric utility. Notwithstanding the provisions of 40 C.F.R. Part 257, "CCR unit" also includes any CCR below the unit boundary of the CCR landfill or CCR surface impoundment.

"Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by an electric utility.

"Encapsulated beneficial use" means a beneficial use of CCR that binds the CCR into a solid matrix and minimizes its mobilization into the surrounding environment.

The definitions in this subsection shall be interpreted in a manner consistent with 40 C.F.R. Part 257, except as expressly provided in this section.

B. The owner or operator of any CCR unit located within the Chesapeake Bay watershed at the Bremo Power Station, Chesapeake Energy Center, Chesterfield Power Station, and Possum Point Power Station that ceased accepting CCR prior to July 1, 2019, shall complete closure of such unit by (i) removing all of the CCR in accordance with applicable standards established by Virginia Solid Waste Management Regulations (9VAC20-81) and (ii) either (a) beneficially reusing all such CCR in a recycling process for encapsulated beneficial use or (b) disposing of the CCR in a permitted landfill on the property upon which the CCR unit is located, adjacent to the property upon which the CCR unit is located, or off of the property on which the CCR unit is located, that includes, at a minimum, a

composite liner and leachate collection system that meets or exceeds the federal Criteria for Municipal Solid Waste Landfills pursuant to 40 C.F.R. Part 258. The owner or operator shall beneficially reuse a total of no less than 6.8 million cubic yards in aggregate of such removed CCR from no fewer than two of the sites listed in this subsection where CCR is located.

C. The owner or operator shall complete the closure of any such CCR unit required by this section no later than 15 years after initiating the closure process at that CCR unit. During the closure process, the owner or operator shall, at its expense, offer to provide a connection to a municipal water supply, or where such connection is not feasible provide water testing, for any residence within one-half mile of the CCR unit.

D. Where closure pursuant to this section requires that CCR or CCR that has been beneficially reused be removed off-site, the owner or operator shall develop a transportation plan in consultation with any county, city, or town in which the CCR units are located and any county, city, or town within two miles of the CCR units that minimizes the impact of any transport of CCR on adjacent property owners and surrounding communities. The transportation plan shall include (i) alternative transportation options to be utilized, including rail and barge transport, if feasible, in combination with other transportation methods necessary to meet the closure timeframe established in subsection C, and (ii) plans for any transportation by truck, including the frequency of truck travel, the route of truck travel, and measures to control noise, traffic impact, safety, and fugitive dust caused by such truck travel. Once such transportation plan is completed, the owner or operator shall post it on a publicly accessible website. The owner or operator shall provide notice of the availability of the plan to the Department and the chief administrative officers of the consulting localities and shall publish such notice once in a newspaper of general circulation in such locality.

E. The owner or operator of any CCR unit subject to the provisions of subsection B shall accept and review proposals to beneficially reuse any CCR that are not subject to an existing contractual agreement to remove CCR pursuant to the provisions of subsection B every four years beginning July 1, 2022. Any entity submitting such a proposal shall provide information from which the owner or operator can determine (i) the amount of CCR that will be utilized for encapsulated beneficial use; (ii) the cost of such beneficial reuse of such CCR; and (iii) the guaranteed timeframe in which the CCR will be utilized.

F. In conducting closure activities described in subsection B, the owner or operator shall (i) identify options for utilizing local workers, (ii) consult with the Commonwealth's Chief Workforce Development Officer on opportunities to advance the Commonwealth's workforce goals, including furtherance of apprenticeship and other workforce training programs to develop the local workforce, and (iii) give priority to the hiring of local workers.

G. No later than October 1, 2022, and no less frequently than every two years thereafter until closure of all of its CCR units is complete, the owner or operator of any CCR unit subject to the provisions of subsection B shall compile the following two reports:

1. A report describing the owner's or operator's closure plan for all such CCR units; the closure progress to date, both per unit and in total; a detailed accounting of the amounts of CCR that have been and are expected to be beneficially reused from such units, both per unit and in total; a detailed accounting of the amounts of CCR that have been and are expected to be landfilled from such units, both per unit and in total; a detailed accounting of the utilization of transportation options and a transportation plan as required by subsection D; and a discussion of groundwater and surface water monitoring results and any measures taken to address such results as closure is being completed.

2. A report that contains the proposals and analysis for proposals required by subsection E.

The owner or operator shall post each such report on a publicly accessible website and shall submit each such report to the Governor, the Secretary of Natural Resources, the Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources, the Chairman of the House Committee on Agriculture, Chesapeake and Natural Resources, the Chairman of the Senate Committee on Commerce and Labor, the Chairman of the House Committee on Commerce and Labor, and the Director.

H. All costs associated with closure of a CCR unit in accordance with this section shall be recoverable through a rate adjustment clause authorized by the State Corporation Commission (the Commission) under the provisions of subdivision A 5 e of § 56-585.1, provided that (i) when determining the reasonableness of such costs the Commission shall not consider closure in place of the CCR unit as an option; (ii) the annual revenue requirement recoverable through a rate adjustment clause authorized under this section, exclusive of any other rate adjustment clauses approved by the Commission under the provisions of subdivision A 5 e of § 56-585.1, shall not exceed $225 million on a Virginia jurisdictional basis for the Commonwealth in any 12-month period, provided that any under-recovery amount of revenue requirements incurred in excess of $225 million in a given 12-month period, limited to the under-recovery amount and the carrying cost, shall be deferred and recovered through the rate adjustment clause over up to three succeeding 12-month periods without regard to this limitation, and with the length of the amortization period being determined by the Commission; (iii) costs may begin accruing on July 1, 2019, but no approved rate adjustment clause charges shall be included in customer bills until July 1, 2021; (iv) any such costs shall be allocated to all customers of the utility in the Commonwealth as a non-bypassable charge, irrespective of the generation supplier of any such customer; and (v) any such costs that are allocated to the utility's system customers outside of the Commonwealth that are not actually recovered from such customers shall be included for cost recovery from jurisdictional customers in the Commonwealth through the rate adjustment clause.

I. Any electric public utility subject to the requirements of this section may, without regard for whether it has petitioned for any rate adjustment clause pursuant to subdivision A 5 e of § 56-585.1, petition the Commission for approval of a plan for CCR unit closure at any or all of its CCR unit sites listed in subsection B. Any such plan shall take into account site-specific conditions and shall include proposals to beneficially reuse no less than 6.8 million cubic yards of CCR in aggregate from no fewer than two of the sites listed in subsection B. The Commission shall issue its final order with regard to any such

petition within six months of its filing, and in doing so shall determine whether the utility's plan for CCR unit closure, and the projected costs associated therewith, are reasonable and prudent, taking into account that closure in place of any CCR unit is not to be considered as an option. The Commission shall not consider plans that do not comply with subsection B.

J. Nothing in this section shall be construed to require additional beneficial reuse of CCR at any active coal-fired electric generation facility if such additional beneficial reuse results in a net increase in truck traffic on the public roads of the locality in which the facility is located as compared to such traffic during calendar year 2018.

K. The Commonwealth shall not authorize any cost recovery by an owner or operator subject to the provisions of this section for any fines or civil penalties resulting from violations of federal and state law or regulation.

2019, cc. 650, 651.

§ 10.1-1402.04. Closure of certain coal combustion residuals units; Giles and Russell Counties.
A. For the purposes of this section:

"Carrying cost" means the cost associated with financing expenditures incurred but not yet recovered from the electric utility's customers and shall be calculated by applying the electric utility's weighted average cost of debt and equity capital, as determined by the State Corporation Commission, with no additional margin or profit, to any unrecovered balances.

"CCR landfill" means an area of land or an excavation that receives CCR and is not a surface impoundment, underground injection well, salt dome formation, salt bed formation, underground or surface coal mine, or cave and that is owned or operated by an electric utility.

"CCR surface impoundment" means a natural topographic depression, man-made excavation, or diked area that (i) is designed to hold an accumulation of CCR and liquids; (ii) treats, stores, or disposes of CCR; and (iii) is owned or operated by an electric utility.

"CCR unit" means any CCR landfill, CCR surface impoundment, lateral expansion of a CCR unit, or combination of two or more such units that is owned by an electric utility. Notwithstanding the provisions of 40 C.F.R. Part 257, "CCR unit" also includes any CCR below the unit boundary of the CCR landfill or CCR surface impoundment.

"Coal combustion residuals" or "CCR" means fly ash, bottom ash, boiler slag, and flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by an electric utility.

"Commission" means the State Corporation Commission.

"Encapsulated beneficial use" means a beneficial use of CCR that binds the CCR into a solid matrix and minimizes its mobilization into the surrounding environment.

The definitions in this subsection shall be interpreted in a manner consistent with 40 C.F.R. Part 257, except as expressly provided in this section.

B. The owner or operator of any CCR unit located in Giles County or Russell County at the Glen Lyn Plant and the Clinch River Plant shall, if all CCR units at such plant ceased receiving CCR and submitted notification of completion of a final cap to the Department prior to January 1, 2019, complete post-closure care and any required corrective action of such unit. If all CCR units at such plant have not submitted notification of completion of a final cap to the Department prior to January 1, 2019, the owner or operator shall close all CCR units at such plant by (i) removing all of the CCR in accordance with applicable standards established by Virginia Solid Waste Management Regulations (9VAC20-81) and (ii) either (a) beneficially reusing all such CCR in a recycling process for encapsulated beneficial use or (b) disposing of the CCR in a permitted landfill on the property upon which the CCR unit is located, adjacent to the property upon which the CCR unit is located, or off of the property on which the CCR unit is located, that includes, at a minimum, a composite liner and leachate collection system that meets or exceeds the federal Criteria for Municipal Solid Waste Landfills pursuant to 40 C.F.R. Part 258. The owner or operator shall beneficially reuse CCR removed from its CCR unit if beneficial use of such removed CCR is anticipated to reduce costs incurred under this section.

C. The owner or operator shall complete the closure of any such CCR unit required by this section no later than 15 years after initiating the excavation process at that CCR unit. During the closure process, the owner or operator shall, at its expense, offer to provide a connection to a municipal water supply, or where such connection is not feasible provide water testing, for any residence within one-half mile of the CCR unit.

D. Where closure pursuant to this section requires that CCR that has been beneficially reused be removed off-site, the owner or operator shall develop a transportation plan in consultation with any county, city, or town in which the CCR units are located and any county, city, or town within two miles of the CCR units that minimizes the impact of any transport of CCR on adjacent property owners and surrounding communities. The transportation plan shall include (i) alternative transportation options to be utilized, including rail and barge transport, if feasible, in combination with other transportation methods necessary to meet the closure timeframe established in subsection C and (ii) plans for any transportation by truck, including the frequency of truck travel, the route of truck travel, and measures to control noise, traffic impact, safety, and fugitive dust caused by such truck travel. Once such transportation plan is completed, the owner or operator shall post it on a publicly accessible website. The owner or operator shall provide notice of the availability of the plan to the Department and the chief administrative officers of the consulting localities and shall publish such notice once in a newspaper of general circulation in such locality.

E. The owner or operator of any CCR unit subject to the provisions of subsection B shall accept and review proposals for the encapsulated beneficial use of CCR pursuant to the provisions of subsection B every four years beginning July 1, 2023. Any entity submitting such a proposal shall provide information from which the owner or operator can determine (i) the amount of CCR that will be utilized for

encapsulated beneficial use; (ii) the cost of the proposed beneficial use of such CCR; and (iii) the guaranteed timeframe in which the CCR will be utilized.

F. In conducting closure activities described in subsection B, the owner or operator shall (i) identify options for utilizing local workers; (ii) consult with the Commonwealth's Chief Workforce Development Officer on opportunities to advance the Commonwealth's workforce goals, including furtherance of apprenticeship and other workforce training programs to develop the local workforce; and (iii) give priority to the hiring of local workers.

G. No later than October 1, 2023, and no less frequently than every two years thereafter until closure of or corrective action at all of its CCR units is complete, the owner or operator of any CCR unit subject to the provisions of subsection B shall compile the following two reports:

1. A report describing the owner's or operator's closure plan for all such CCR units; the closure progress to date, both per unit and in total; a detailed accounting of the amounts of CCR that have been and are expected to be beneficially reused from such units, both per unit and in total; a detailed accounting of the amounts of CCR that have been and are expected to be landfilled from such units, both per unit and in total; a detailed accounting of the utilization of transportation options and a transportation plan as required by subsection D; and a discussion of groundwater and surface water monitoring results and any corrective actions or other measures taken to address such results as closure is being completed.

2. A report that contains the proposals and analysis for proposals required by subsection E.

The owner or operator shall post each such report on a publicly accessible website and shall submit each such report to the Governor, the Secretary of Natural Resources, the Chairman of the Senate Committee on Agriculture, Conservation and Natural Resources, the Chairman of the House Committee on Agriculture, Chesapeake and Natural Resources, the Chairman of the Senate Committee on Commerce and Labor, the Chairman of the House Committee on Labor and Commerce, and the Director.

H. All costs associated with closure by removal of a CCR unit or encapsulated beneficial use of CCR material in accordance with subsection B shall be recoverable through a rate adjustment clause authorized by the Commission under the provisions of subdivision A 5 e of § 56-585.1, provided that (i) when determining the reasonableness of such costs the Commission shall not consider closure in place of the CCR unit as an option; (ii) the annual revenue requirement recoverable through a rate adjustment clause authorized under this section, exclusive of any other rate adjustment clauses approved by the Commission under the provisions of subdivision A 5 e of § 56-585.1, shall not exceed $40 million on a Virginia jurisdictional basis for the Commonwealth in any 12-month period, provided that any under-recovery amount of revenue requirements incurred in excess of $40 million in a given 12-month period, limited to the under-recovery amount and the carrying cost, shall be deferred and recovered through the rate adjustment clause over up to three succeeding 12-month periods without regard to this limitation, and with the length of the amortization period being determined by the

Commission; (iii) costs may begin accruing on July 1, 2020, but no approved rate adjustment clause charges shall be included in customer bills until July 1, 2022; (iv) any such costs shall be allocated to all customers of the utility in the Commonwealth as a non-bypassable charge, irrespective of the generation supplier of any such customer; and (v) any such costs that are allocated to the utility's system customers outside of the Commonwealth that are not actually recovered from such customers shall be included for cost recovery from jurisdictional customers in the Commonwealth through the rate adjustment clause.

I. Any electric public utility subject to the requirements of this section may, without regard for whether it has petitioned for any rate adjustment clause pursuant to subdivision A 5 e of § 56-585.1, petition the Commission for approval of a plan for CCR unit closure at any or all of its CCR unit sites listed in subsection B. Any such plan shall take into account site-specific conditions and shall include proposals to beneficially reuse CCR from the sites if beneficial use is anticipated to reduce the costs allocated to customers. The Commission shall issue its final order with regard to any such petition within six months of its filing, and in doing so shall determine whether the utility's plan for CCR unit closure, and the projected costs associated therewith, are reasonable and prudent, taking into account that closure in place of any CCR unit is not to be considered as an option. The Commission shall not consider plans that do not comply with subsection B.

J. Nothing in this section shall be construed to require additional beneficial reuse of CCR at any active coal-fired electric generation facility if such additional beneficial reuse results in a net increase in truck traffic on the public roads of the locality in which the facility is located as compared with such traffic during calendar year 2019.

K. The Commonwealth shall not authorize any cost recovery by an owner or operator subject to the provisions of this section for any fines or civil penalties resulting from violations of federal and state law or regulation.

2020, c. 563.

§ 10.1-1402.1. Permit fee regulations.

Regulations promulgated by the Board which establish a permit fee assessment and collection system pursuant to subdivisions 15a, 15b and 16 of § 10.1-1402 shall be governed by the following:

1. Permit fees charged an applicant shall reflect the average time and complexity of processing a permit in each of the various categories of permits and permit actions. No fees shall be charged for minor modifications or minor amendments to such permits. For purposes of this subdivision, "minor permit modifications" or "minor amendments" means specific types of changes, defined by the Board, that are made to keep the permit current with routine changes to the facility or its operation and that do not require extensive review. A minor permit modification or amendment does not substantially alter permit conditions, increase the size of the operation, or reduce the capacity of the facility to protect human health or the environment.

2. When promulgating regulations establishing permit fees, the Board shall take into account the permit fees charged in neighboring states and the importance of not placing existing or prospective industries in the Commonwealth at a competitive disadvantage.

3. On January 1, 1993, and January 1 of every even-numbered year thereafter, the Board shall evaluate the implementation of the permit fee program and provide this evaluation in writing to the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Agriculture, Chesapeake and Natural Resources, and Finance. This evaluation shall include a report on the total fees collected, the amount of general funds allocated to the Department, the Department's use of the fees and the general funds, the number of permit applications received, the number of permits issued, the progress in eliminating permit backlogs, and the timeliness of permit processing.

4. Fees collected pursuant to subdivisions 15a, 15b or 16 of § 10.1-1402 shall not supplant or reduce in any way the general fund appropriation to the Board.

5. These permit fees shall be collected in order to recover a portion of the agency's costs associated with (i) the processing of an application to issue, reissue, amend or modify permits, which the Board has authority to issue for the purpose of more efficiently and expeditiously processing and maintaining permits and (ii) the inspections necessary to assure the compliance of large quantity generators of hazardous waste. The fees shall be exempt from statewide indirect costs charged and collected by the Department of Accounts.

1992, c. 853; 2002, c. 822; 2004, cc. 249, 324.

§ 10.1-1402.1:1. Annual fees for nonhazardous solid waste management facilities.

A. In addition to the permit fees assessed and collected pursuant to § 10.1-1402.1, the Board shall collect an annual fee from any person operating a sanitary landfill or other facility permitted under this chapter for the disposal, storage, or treatment of nonhazardous solid waste. The fees shall be exempt from statewide indirect cost charged and assessed by the Department of Accounts. Annual fees shall reflect the time and complexity of inspecting and monitoring the different categories of facilities. Any annual fee that is based on volume shall be calculated using the tonnage reported by each facility pursuant to § 10.1-1413.1 for the preceding year, and shall be adjusted annually by the Consumer Price Index. The annual fee shall be assessed as follows:

1. Sanitary landfills, noncaptive industrial landfills, and construction and demolition debris landfills shall be assessed an annual fee of $0.115 per ton.

2. Incinerators and energy recovery facilities shall be assessed an annual fee of $0.055 per ton.

Ash generated by incinerators and energy recovery facilities that are subject to this section shall be exempted from the annual fees assessed under this section.

3. Other types of facilities shall be assessed an annual fee as follows:

Composting	$1,200

Regulated medical waste	$2,500
Materials recovery	$4,500
Transfer station	$5,500
Facilities in post-closure care	$1,000

The annual fee for active captive landfills shall be as follows:

Small landfills (landfilling less than 100,000 tons per year)	$2,500
Large landfills (landfilling 100,000 tons or more per year)	$7,500

B. The Board shall by regulation prescribe the manner and schedule for remitting fees imposed by this section and may allow for the quarterly payment of any such fees.

C. The regulation shall include provisions allowing the Director to waive or reduce fees assessed during a state of emergency or for waste resulting from emergency response actions.

D. The Board may promulgate regulations establishing a schedule of reduced permit fees for facilities that have established a record of compliance with the terms and requirements of their permits and shall establish criteria, by regulation, to provide for reductions in the annual fee amount assessed for facilities based upon acceptance into the Department's programs to recognize excellent environmental performance.

E. The operator of a facility owned by a private entity and subject to any fee imposed pursuant to this section shall collect such fee as a surcharge on any fee schedule established pursuant to law, ordinance, resolution or contract for solid waste processing or disposal operations at the facility.

2004, cc. 249, 324; 2011, c. 420.

§ 10.1-1402.2. Permit Program Fund established; use of moneys.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the Virginia Waste Management Board Permit Program Fund, hereafter referred to as the Fund. Notwithstanding the provisions of § 2.2-1802, all moneys collected pursuant to subdivision 16 of § 10.1-1402 shall be paid into the state treasury to the credit of the Fund.

B. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it.

C. The Board is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes of recovering portions of the costs of processing applications under subdivision 16 of § 10.1-1402 under the direction of the Director.

D. An accounting of moneys received by and distributed from the Fund shall be kept by the State Comptroller and furnished upon request to the Governor or the General Assembly.

1992, c. 853.

§ 10.1-1402.3. Conformance with federal requirements.

Notwithstanding the provisions of this article, any fee system developed by the Board may be modified by regulation promulgated by the Board, as may be necessary to conform with the requirements of federal acts and any regulations promulgated thereunder. Any modification imposed under this section shall be submitted to the members of the Senate Committees on Agriculture, Conservation and Natural Resources, and Finance; and the House Committees on Appropriations, Conservation and Natural Resources, and Finance.

1992, c. 853.

§ 10.1-1403. Advisory committees.

The Governor shall appoint such advisory committees as he may deem necessary to aid in the development of an effective waste management program.

1986, c. 492, § 10-267; 1988, c. 891.

§ 10.1-1404. Department continued; general powers.

A. The Department of Waste Management is continued. The Department shall be headed by a Director, who shall be appointed by the Governor to serve at his pleasure for a term coincident with his own or until a successor shall be appointed and qualified.

B. In addition to the powers designated elsewhere in this chapter, the Department shall have the power to:

1. Administer the policies and regulations established by the Board pursuant to this chapter;

2. Employ such personnel as may be required to carry out the purposes of this chapter;

3. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter, including, but not limited to, contracts with the United States, other state agencies and governmental subdivisions of the Commonwealth; and

4. Provide upon request and without charge, technical assistance to local governing bodies regarding stockpiling of tires pursuant to its authority in this chapter to promote resource conservation and resource recovery systems. The governing body of any county, city or town may adopt an ordinance regulating the stockpiling of tires, including but not limited to, the location of such stockpiles and the number of tires to be deposited at the site.

1986, c. 492, § 10-268; 1988, c. 891.

§ 10.1-1405. Powers and duties of Director.

A. The Director, under the direction and control of the Secretary of Natural Resources, shall exercise such powers and perform such duties as are conferred or imposed upon him by law and shall perform any other duties required of him by the Governor or the Board.

B. In addition to the other responsibilities set forth herein, the Director shall carry out management and supervisory responsibilities in accordance with the regulations and policies of the Board. In no event shall the Director have the authority to promulgate any final regulation.

The Director shall be vested with all the authority of the Board when it is not in session, subject to such regulations as may be prescribed by the Board.

C. The Director shall serve as the liaison with the United States Department of Energy on matters concerning the siting of high-level radioactive waste repositories, pursuant to the terms of the Nuclear Waste Policy Act of 1982.

D. The Director shall obtain a criminal records check pursuant to § 19.2-389 of key personnel listed in the disclosure statement when the Director determines, in his sole discretion, that such a records check will serve the purposes of this chapter.

1986, c. 492, § 10-269; 1988, c. 891; 1990, c. 919.

§ 10.1-1406. Exemptions from liability; expedited settlements.

A. No person shall be liable under the provisions of subdivision 19 of § 10.1-1402 for cleanup or to reimburse the Virginia Environmental Emergency Response Fund if he can establish by a preponderance of the evidence that the violation and the damages resulting therefrom were caused solely by:

1. An act of God;

2. An act of war;

3. An act or omission of a third party other than an employee or agent of the defendant, or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the defendant (except where the sole contractual arrangement arises from a published tariff and acceptance for carriage by a common carrier by rail), if the defendant establishes by a preponderance of the evidence that (i) he exercised due care with respect to the hazardous waste or hazardous substance concerned, taking into consideration the characteristics of such hazardous waste or hazardous substance, in light of all relevant facts and circumstances and (ii) he took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

4. Any combination of subdivisions 1 through 3 of this section. For purposes of this section, the term "contractual arrangement" shall have the meaning ascribed to it in 42 U.S.C. § 9601 (35).

B. The Board may, consistent with programs developed under the federal acts, expedite a determination to limit the liability of innocent landowners, de minimis contributors or others who have grounds to claim limited responsibility for a containment or cleanup which may be required pursuant to this chapter.

1986, c. 566, § 10-270; 1988, cc. 627, 891; 1990, cc. 472, 919; 1991, c. 718; 1999, c. 798.

§ 10.1-1406.1. Access to abandoned waste sites.

A. For the purposes of this section, "abandoned waste site" means a waste site for which (i) there has not been adequate remediation or closure as required by Chapter 14 (§ 10.1-1400 et seq.) of this title, (ii) adequate financial assurances as required by § 10.1-1410 or § 10.1-1428 are not provided, and

(iii) the owner, operator, or other person responsible for the cost of cleanup or remediation under state or federal law or regulation cannot be located.

B. Any local government or agency of the Commonwealth may apply to the appropriate circuit court for access to an abandoned waste site in order to investigate contamination, to abate any hazard caused by the improper management of substances within the jurisdiction of the Board, or to remediate the site. The petition shall include (i) a demonstration that all reasonable efforts have been made to locate the owner, operator or other responsible party and (ii) a plan approved by the Director and which is consistent with applicable state and federal laws and regulations. The approval or disapproval of a plan shall not be considered a case decision as defined by § 2.2-4001.

C. Any person, local government, or agency of the Commonwealth not otherwise liable under federal or state law or regulation who performs any investigative, abatement or remediation activities pursuant to this section shall not become subject to civil enforcement or remediation action under this chapter or other applicable state laws or to private civil suits related to contamination not caused by its investigative, abatement or remediation activities.

D. This section shall not in any way limit the authority of the Board, Director, or Department otherwise created by Chapter 14 of this title.

1996, c. 547.

§ 10.1-1406.2. Conditional exemption for coal and mineral mining overburden or solid waste.

The provisions of this chapter shall not apply to coal or mineral mining overburden returned to the mine site or solid wastes from the extraction, beneficiation, and processing of coal or minerals that are managed in accordance with requirements promulgated by the Department of Mines, Minerals and Energy.

1999, cc. 584, 613, 947.

§ 10.1-1407. Repealed.

Repealed by Acts 1988, cc. 696, 891.

§ 10.1-1407.1. Notification of local government of violation.

Upon determining that there has been a violation of a regulation promulgated under this chapter and such violation poses an imminent threat to the health, safety or welfare of the public, the Director shall immediately notify the chief administrative officer of any potentially affected local government. Neither the Director, the Commonwealth, nor any employee of the Commonwealth shall be liable for a failure to provide, or a delay in providing, the notification required by this section.

1988, cc. 434, 891.

Article 2 - SOLID WASTE MANAGEMENT

§ 10.1-1408. Repealed.

Repealed by Acts 1988, cc. 696, 891.

§ 10.1-1408.1. Permit required; open dumps prohibited.

A. No person shall operate any sanitary landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste without a permit from the Director.

B. No application for (i) a new solid waste management facility permit or (ii) application for a permit amendment or variance allowing a category 2 landfill, as defined in this section, to expand or increase in capacity shall be complete unless it contains the following:

1. Certification from the governing body of the county, city or town in which the facility is to be located that the location and operation of the facility are consistent with all applicable ordinances. The governing body shall inform the applicant and the Department of the facility's compliance or noncompliance not more than 120 days from receipt of a request from the applicant. No such certification shall be required for the application for the renewal of a permit or transfer of a permit as authorized by regulations of the Board;

2. A disclosure statement, except that the Director, upon request and in his sole discretion, and when in his judgment other information is sufficient and available, may waive the requirement for a disclosure statement for a captive industrial landfill when such a statement would not serve the purposes of this chapter;

3. If the applicant proposes to locate the facility on property not governed by any county, city or town zoning ordinance, certification from the governing body that it has held a public hearing, in accordance with the applicable provisions of § 15.2-2204, to receive public comment on the proposed facility. Such certification shall be provided to the applicant and the Department within 120 days from receipt of a request from the applicant;

4. If the applicant proposes to operate a new sanitary landfill or transfer station, a statement, including a description of the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the Department the notice of intent to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid waste management regulations. The public comment steps shall include publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time and location of the public meeting the applicant will hold and the name, address and telephone number of a person employed by the applicant, who can be contacted by interested persons to answer questions or receive comments on the siting and operation of the proposed sanitary landfill or

transfer station. The first publication of the public notice shall be at least fourteen days prior to the public meeting date.

The provisions of this subdivision shall not apply to applicants for a permit to operate a new captive industrial landfill or a new construction-demolition-debris landfill;

5. If the applicant is a local government or public authority that proposes to operate a new municipal sanitary landfill or transfer station, a statement, including a description of the steps taken by the applicant to seek the comments of the residents of the area where the sanitary landfill or transfer station is proposed to be located, regarding the siting and operation of the proposed sanitary landfill or transfer station. The public comment steps shall be taken prior to filing with the Department the notice of intent to apply for a permit for the sanitary landfill or transfer station as required by the Department's solid waste management regulations. The public comment steps shall include the formation of a citizens' advisory group to assist the locality or public authority with the selection of a proposed site for the sanitary landfill or transfer station, publication of a public notice once a week for two consecutive weeks in a newspaper of general circulation serving the locality where the sanitary landfill or transfer station is proposed to be located, and holding at least one public meeting within the locality to identify issues of concern, to facilitate communication and to establish a dialogue between the applicant and persons who may be affected by the issuance of a permit for the sanitary landfill or transfer station. The public notice shall include a statement of the applicant's intent to apply for a permit to operate the proposed sanitary landfill or transfer station, the proposed sanitary landfill or transfer station site location, the date, time and location of the public meeting the applicant will hold and the name, address and telephone number of a person employed by the applicant, who can be contacted by interested persons to answer questions or receive comments on the siting and operation of the proposed sanitary landfill or transfer station. The first publication of the public notice shall be at least fourteen days prior to the public meeting date. For local governments that have zoning ordinances, such public comment steps as required under §§ 15.2-2204 and 15.2-2285 shall satisfy the public comment requirements for public hearings and public notice as required under this section. Any applicant which is a local government or public authority that proposes to operate a new transfer station on land where a municipal sanitary landfill is already located shall be exempt from the public comment requirements for public hearing and public notice otherwise required under this section;

6. If the application is for a new municipal solid waste landfill or for an expansion of an existing municipal solid waste landfill, a statement, signed by the applicant, guaranteeing that sufficient disposal capacity will be available in the facility to enable localities within the Commonwealth to comply with solid waste management plans developed pursuant to § 10.1-1411, and certifying that such localities will be allowed to contract for and to reserve disposal capacity in the facility. This provision shall not apply to permit applications from one or more political subdivisions for new landfills or expanded landfills that will only accept municipal solid waste generated within those political subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement;

7. If the application is for a new municipal solid waste landfill or for an expansion of an existing municipal solid waste landfill, certification from the governing body of the locality in which the facility would be located that a host agreement has been reached between the applicant and the governing body unless the governing body or a public service authority of which the governing body is a member would be the owner and operator of the landfill. The agreement shall, at a minimum, have provisions covering (i) the amount of financial compensation the applicant will provide the host locality, (ii) daily travel routes and traffic volumes, (iii) the daily disposal limit, and (iv) the anticipated service area of the facility. The host agreement shall contain a provision that the applicant will pay the full cost of at least one full-time employee of the locality whose responsibility it will be to monitor and inspect waste transportation and disposal practices in the locality. The host agreement shall also provide that the applicant shall, when requested by the host locality, split air and water samples so that the host locality may independently test the sample, with all associated costs paid for by the applicant. All such sampling results shall be provided to the Department. For purposes of this subdivision, "host agreement" means any lease, contract, agreement or land use permit entered into or issued by the locality in which the landfill is situated which includes terms or conditions governing the operation of the landfill;

8. If the application is for a locality-owned and locality-operated new municipal solid waste landfill or for an expansion of an existing such municipal solid waste landfill, information on the anticipated (i) daily travel routes and traffic volumes, (ii) daily disposal limit, and (iii) service area of the facility; and

9. If the application is for a new solid waste management facility permit or for modification of a permit to allow an existing solid waste management facility to expand or increase its capacity, the application shall include certification from the governing body for the locality in which the facility is or will be located that: (i) the proposed new facility or the expansion or increase in capacity of the existing facility is consistent with the applicable local or regional solid waste management plan developed and approved pursuant to § 10.1-1411; or (ii) the local government or solid waste management planning unit has initiated the process to revise the solid waste management plan to include the new or expanded facility. Inclusion of such certification shall be sufficient to allow processing of the permit application, up to but not including publication of the draft permit or permit amendment for public comment, but shall not bind the Director in making the determination required by subdivision D 1.

C. Notwithstanding any other provision of law:

1. Every holder of a permit issued under this article who has not earlier filed a disclosure statement shall, prior to July 1, 1991, file a disclosure statement with the Director.

2. Every applicant for a permit under this article shall file a disclosure statement with the Director, together with the permit application or prior to September 1, 1990, whichever comes later. No permit application shall be deemed incomplete for lack of a disclosure statement prior to September 1, 1990.

3. Every applicant shall update its disclosure statement quarterly to indicate any change of condition that renders any portion of the disclosure statement materially incomplete or inaccurate.

4. The Director, upon request and in his sole discretion, and when in his judgment other information is sufficient and available, may waive the requirements of this subsection for a captive industrial waste landfill when such requirements would not serve the purposes of this chapter.

D. 1. Except as provided in subdivision D 2, no permit for a new solid waste management facility nor any amendment to a permit allowing facility expansion or an increase in capacity shall be issued until the Director has determined, after an investigation and analysis of the potential human health, environmental, transportation infrastructure, and transportation safety impacts and needs and an evaluation of comments by the host local government, other local governments and interested persons, that (i) the proposed facility, expansion, or increase protects present and future human health and safety and the environment; (ii) there is a need for the additional capacity; (iii) sufficient infrastructure will exist to safely handle the waste flow; (iv) the increase is consistent with locality-imposed or state-imposed daily disposal limits; (v) the public interest will be served by the proposed facility's operation or the expansion or increase in capacity of a facility; and (vi) the proposed solid waste management facility, facility expansion, or additional capacity is consistent with regional and local solid waste management plans developed pursuant to § 10.1-1411. The Department shall hold a public hearing within the said county, city or town prior to the issuance of any such permit for the management of nonhazardous solid waste. Subdivision D 2, in lieu of this subdivision, shall apply to nonhazardous industrial solid waste management facilities owned or operated by the generator of the waste managed at the facility, and that accept only waste generated by the facility owner or operator. The Board shall have the authority to promulgate regulations to implement this subdivision.

2. No new permit for a nonhazardous industrial solid waste management facility that is owned or operated by the generator of the waste managed at the facility, and that accepts only waste generated by the facility owner or operator, shall be issued until the Director has determined, after investigation and evaluation of comments by the local government, that the proposed facility poses no substantial present or potential danger to human health or the environment. The Department shall hold a public hearing within the county, city or town where the facility is to be located prior to the issuance of any such permit for the management of nonhazardous industrial solid waste.

E. The permit shall contain such conditions or requirements as are necessary to comply with the requirements of this Code and the regulations of the Board and to protect present and future human health and the environment. To the extent allowed by federal law, any person holding a permit that is intending to upgrade the permitted solid waste management facility by installing technology, control equipment, or other apparatus that the permittee demonstrates to the satisfaction of the Director will result in improved energy efficiency, protect waters of the state, including both surface and ground water, and protect air quality shall not be required to obtain a modified or amended permit.

The Director may include in any permit such recordkeeping, testing and reporting requirements as are necessary to ensure that the local governing body of the county, city or town where the waste management facility is located is kept timely informed regarding the general nature and quantity of waste being disposed of at the facility. Such recordkeeping, testing and reporting requirements shall require

disclosure of proprietary information only as is necessary to carry out the purposes of this chapter. At least once every ten years, the Director shall review and issue written findings on the environmental compliance history of each permittee, material changes, if any, in key personnel, and technical limitations, standards, or regulations on which the original permit was based. The time period for review of each category of permits shall be established by Board regulation. If, upon such review, the Director finds that repeated material or substantial violations of the permittee or material changes in the permittee's key personnel would make continued operation of the facility not in the best interests of human health or the environment, the Director shall amend or revoke the permit, in accordance herewith. Whenever such review is undertaken, the Director may amend the permit to include additional limitations, standards, or conditions when the technical limitations, standards, or regulations on which the original permit was based have been changed by statute or amended by regulation or when any of the conditions in subsection B of § 10.1-1409 exist. The Director may deny, revoke, or suspend any permit for any of the grounds listed under subsection A of § 10.1-1409.

F. There shall exist no right to operate a landfill or other facility for the disposal, treatment or storage of nonhazardous solid waste or hazardous waste within the Commonwealth. Permits for solid waste management facilities shall not be transferable except as authorized in regulations promulgated by the Board. The issuance of a permit shall not convey or establish any property rights or any exclusive privilege, nor shall it authorize any injury to private property or any invasion of personal rights or any infringement of federal, state, or local law or regulation.

G. No person shall dispose of solid waste in an open dump or dispose of or manage solid waste in an unpermitted facility, including by disposing, causing to be disposed, or arranging for the disposal of solid waste upon a property for which the Director has not issued a permit and that is not otherwise exempt from permitting requirements.

H. No person shall own, operate or allow to be operated on his property an open dump.

I. No person shall allow waste to be disposed of on his property without a permit. Any person who removes trees, brush, or other vegetation from land used for agricultural or forestal purposes shall not be required to obtain a permit if such material is deposited or placed on the same or other property of the same landowner from which such materials were cleared. The Board shall by regulation provide for other reasonable exemptions from permitting requirements for the disposal of trees, brush and other vegetation when such materials are removed for agricultural or forestal purposes.

When promulgating any regulation pursuant to this section, the Board shall consider the character of the land affected, the density of population, and the volume of waste to be disposed, as well as other relevant factors.

J. No permit shall be required pursuant to this section for recycling or for temporary storage incidental to recycling. As used in this subsection, "recycling" means any process whereby material which would otherwise be solid waste is used or reused, or prepared for use or reuse, as an ingredient in an industrial process to make a product, or as an effective substitute for a commercial product.

K. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of yard waste composting facilities. To accomplish this, the Board is authorized to exempt such facilities from regulations governing the treatment of waste and to establish an expedited approval process. Agricultural operations receiving only yard waste for composting shall be exempt from permitting requirements provided that (i) the composting area is located not less than 300 feet from a property boundary, is located not less than 1,000 feet from an occupied dwelling not located on the same property as the composting area, and is not located within an area designated as a flood plain as defined in § 10.1-600; (ii) the agricultural operation has at least one acre of ground suitable to receive yard waste for each 150 cubic yards of finished compost generated; (iii) the total time for the composting process and storage of material that is being composted or has been composted shall not exceed eighteen months prior to its field application or sale as a horticultural or agricultural product; and (iv) the owner or operator of the agricultural operation notifies the Director in writing of his intent to operate a yard waste composting facility and the amount of land available for the receipt of yard waste. In addition to the requirements set forth in clauses (i) through (iv) of the preceding sentence, the owner and operator of any agricultural operation that receives more than 6,000 cubic yards of yard waste generated from property not within the control of the owner or the operator in any twelve-month period shall be exempt from permitting requirements provided (i) the owner and operator submit to the Director an annual report describing the volume and types of yard waste received by such operation for composting and (ii) the operator shall certify that the yard waste composting facility complies with local ordinances. The Director shall establish a procedure for the filing of the notices, annual reports and certificates required by this subsection and shall prescribe the forms for the annual reports and certificates. Nothing contained in this article shall prohibit the sale of composted yard waste for horticultural or agricultural use, provided that any composted yard waste sold as a commercial fertilizer with claims of specific nutrient values, promoting plant growth, or of conditioning soil shall be sold in accordance with Chapter 36 (§ 3.2-3600 et seq.) of Title 3.2. As used in this subsection, "agricultural operation" shall have the same meaning ascribed to it in § 3.2-300.

The operation of a composting facility as provided in this subsection shall not relieve the owner or operator of such a facility from liability for any violation of this chapter.

L. The Board shall provide for reasonable exemptions from the permitting requirements, both procedural and substantive, in order to encourage the development of facilities for the decomposition of vegetative waste. To accomplish this, the Board shall approve an expedited approval process. As used in this subsection, the decomposition of vegetative waste means a natural aerobic or anaerobic process, active or passive, which results in the decay and chemical breakdown of the vegetative waste. Nothing in this subsection shall be construed to prohibit a city or county from exercising its existing authority to regulate such facilities by requiring, among other things, permits and proof of financial security.

M. In receiving and processing applications for permits required by this section, the Director shall assign top priority to applications which (i) agree to accept nonhazardous recycling residues and (ii) pledge to charge tipping fees for disposal of nonhazardous recycling residues which do not exceed those charged for nonhazardous municipal solid waste. Applications meeting these requirements shall be acted upon no later than six months after they are deemed complete.

N. Every solid waste management facility shall be operated in compliance with the regulations promulgated by the Board pursuant to this chapter. To the extent consistent with federal law, those facilities which were permitted prior to March 15, 1993, and upon which solid waste has been disposed of prior to October 9, 1993, may continue to receive solid waste until they have reached their vertical design capacity, provided that the facility is in compliance with the requirements for liners and leachate control in effect at the time of permit issuance, and further provided that on or before October 9, 1993, the owner or operator of the solid waste management facility submits to the Director:

1. An acknowledgement that the owner or operator is familiar with state and federal law and regulations pertaining to solid waste management facilities operating after October 9, 1993, including postclosure care, corrective action and financial responsibility requirements;

2. A statement signed by a registered professional engineer that he has reviewed the regulations established by the Department for solid waste management facilities, including the open dump criteria contained therein; that he has inspected the facility and examined the monitoring data compiled for the facility in accordance with applicable regulations; and that, on the basis of his inspection and review, he has concluded that: (i) the facility is not an open dump, (ii) the facility does not pose a substantial present or potential hazard to human health and the environment, and (iii) the leachate or residues from the facility do not pose a threat of contamination or pollution of the air, surface water or ground water in a manner constituting an open dump or resulting in a substantial present or potential hazard to human health or the environment; and

3. A statement signed by the owner or operator (i) that the facility complies with applicable financial assurance regulations and (ii) estimating when the facility will reach its vertical design capacity.

The facility may not be enlarged prematurely to avoid compliance with state or federal regulations when such enlargement is not consistent with past operating practices, the permit or modified operating practices to ensure good management.

Facilities which are authorized by this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall be as follows:

Category 1: Nonhazardous industrial waste facilities that are located on property owned or controlled by the generator of the waste disposed of in the facility;

Category 2: Nonhazardous industrial waste facilities other than those that are located on property owned or controlled by the generator of the waste disposed of in the facility, provided that the facility

accepts only industrial waste streams which the facility has lawfully accepted prior to July 1, 1995, or other nonhazardous industrial waste as approved by the Department on a case-by-case basis; and

Category 3: Facilities that accept only construction-demolition-debris waste as defined in the Board's regulations.

The Director may prohibit or restrict the disposal of waste in facilities described in this subsection which contains hazardous constituents as defined in applicable regulations which, in the opinion of the Director, would pose a substantial risk to health or the environment. Facilities described in category 3 may expand laterally beyond the waste disposal boundaries existing on October 9, 1993, provided that there is first installed, in such expanded areas, liners and leachate control systems meeting the applicable performance requirements of the Board's regulations, or a demonstration is made to the satisfaction of the Director that such facilities satisfy the applicable variance criteria in the Board's regulations.

Owners or operators of facilities which are authorized under this subsection to accept waste for disposal beyond the waste boundaries existing on October 9, 1993, shall ensure that such expanded disposal areas maintain setback distances applicable to such facilities under the Board's current regulations and local ordinances. Prior to the expansion of any facility described in category 2 or 3, the owner or operator shall provide the Director with written notice of the proposed expansion at least sixty days prior to commencement of construction. The notice shall include recent groundwater monitoring data sufficient to determine that the facility does not pose a threat of contamination of groundwater in a manner constituting an open dump or creating a substantial present or potential hazard to human health or the environment. The Director shall evaluate the data included with the notification and may advise the owner or operator of any additional requirements that may be necessary to ensure compliance with applicable laws and prevent a substantial present or potential hazard to health or the environment.

Facilities, or portions thereof, which have reached their vertical design capacity shall be closed in compliance with regulations promulgated by the Board.

Nothing in this subsection shall alter any requirement for groundwater monitoring, financial responsibility, operator certification, closure, postclosure care, operation, maintenance or corrective action imposed under state or federal law or regulation, or impair the powers of the Director pursuant to § 10.1-1409.

O. Portions of a permitted solid waste management facility used solely for the storage of household hazardous waste may store household hazardous waste for a period not to exceed one year, provided that such wastes are properly contained and are segregated to prevent mixing of incompatible wastes.

P. Any permit for a new municipal solid waste landfill, and any permit amendment authorizing expansion of an existing municipal solid waste landfill, shall incorporate conditions to require that capacity in the landfill will be available to localities within the Commonwealth that choose to contract for and reserve such capacity for disposal of such localities' solid waste in accordance with solid waste

management plans developed by such localities pursuant to § 10.1-1411. This provision shall not apply to permit applications from one or more political subdivisions for new landfills or expanded landfills that will only accept municipal solid waste generated within the political subdivision or subdivisions' jurisdiction or municipal solid waste generated within other political subdivisions pursuant to an interjurisdictional agreement.

Q. No application for coverage under a permit-by-rule or for modification of coverage under a permit-by-rule shall be complete unless it contains certification from the governing body of the locality in which the facility is to be located that the facility is consistent with the solid waste management plan developed and approved in accordance with § 10.1-1411.

1988, cc. 696, 891; 1989, c. 623; 1990, cc. 360, 781, 919; 1992, c. 286; 1993, cc. 214, 469, 476, 496; 1994, c. 614; 1995, c. 442; 1996, c. 236; 1997, c. 875; 1999, cc. 580, 584, 611, 613, 947; 2000, cc. 420, 422; 2006, c. 62; 2007, c. 23; 2012, c. 581; 2020, c. 621.

§ 10.1-1408.2. Certification and on-site presence of facility operator.

A. On and after January 1, 1993, no person shall be employed as a waste management facility operator, nor shall any person represent himself as a waste management facility operator, unless such person has been licensed by the Board for Waste Management Facility Operators.

B. On and after January 1, 1993, all solid waste management facilities shall operate under the direct supervision of a waste management facility operator licensed by the Board for Waste Management Facility Operators.

1991, cc. 551, 737; 1997, c. 885.

§ 10.1-1408.3. Repealed.

Repealed by Acts 2007, c. 23, cl. 2.

§ 10.1-1408.4. Landfill siting review.

A. Before granting a permit which approves site suitability for a new municipal solid waste landfill, the Director shall determine, in writing, that the site on which the landfill is to be constructed is suitable for the construction and operation of such a landfill. In making his determination, the Director shall consider and address, in addition to such others as he deems appropriate, the following factors:

1. Based on a written, site-specific report prepared by the Virginia Department of Transportation, the adequacy of transportation facilities that will be available to serve the landfill, including the impact of the landfill on local traffic volume, road congestion, and highway safety;

2. The potential impact of the proposed landfill on parks and recreational areas, public water supplies, marine resources, wetlands, historic sites, fish and wildlife, water quality, and tourism; and

3. The geologic suitability of the proposed site, including proximity to areas of seismic activity and karst topography.

The applicant shall provide such information on these factors as the Director may request.

B. In addition to such other types of locations as may be determined by the Board, no new municipal solid waste landfill shall be constructed:

1. In a 100-year flood plain;

2. In any tidal wetland or nontidal wetland contiguous to any surface water body, except in accordance with § 10.1-1408.5;

3. Within three miles upgradient of any existing surface or groundwater public water supply intake or reservoir. However, a new municipal solid waste landfill may be constructed within a closer distance but no closer than one mile from any existing surface or groundwater public water supply intake or reservoir if: (i) the proposed landfill would meet all of the other requirements of this chapter and subtitle D of the federal Resource Conservation and Recovery Act, including alternative liner systems approved in accordance with that Act; (ii) the permit requires that groundwater protection standards be established and approved by the Director prior to the receipt of waste; (iii) the permit requires installation of at least two synthetic liners under the waste disposal areas and requires leachate collection systems to be installed above and below the uppermost liner; (iv) the permit requires all groundwater monitoring wells located within the facility's boundary and between the landfill and any water supply intake to be sampled quarterly and the results reported to the Department within 15 days of the owner or operator receiving the laboratory analysis; and (v) the proposed landfill meets any other conditions deemed necessary by the Director, in consultation with the Commissioner of Health, to protect against groundwater and surface water contamination. In the Counties of Mecklenburg and Halifax, a new municipal solid waste landfill may be exempt from the provisions of this subdivision and may be constructed within a shorter distance from an existing surface or groundwater public water supply intake or reservoir if the Director determines that such distance would not be detrimental to human health and the environment;

4. In any area vulnerable to flooding resulting from dam failures;

5. Over a sinkhole or less than 100 feet above a solution cavern associated with karst topography;

6. In any park or recreational area, wildlife management area or area designated by any federal or state agency as the critical habitat of any endangered species; or

7. Over an active fault.

C. There shall be no additional exemptions granted from this section unless (i) the proponent has submitted to the Department an assessment of the potential impact to public water supplies, the need for the exemption, and the alternatives considered and (ii) the Department has made the information available for public review for at least 60 days prior to the first day of the next Regular Session of the General Assembly.

1999, cc. 584, 613, 947; 2001, c. 767; 2003, c. 834; 2005, c. 920.

§ 10.1-1408.5. Special provisions regarding wetlands.

A. The Director shall not issue any solid waste permit for a new municipal solid waste landfill or the expansion of a municipal solid waste landfill that would be sited in a wetland, provided that this subsection shall not apply to subsection B or the (i) expansion of an existing municipal solid waste landfill located in the City of Danville or the City of Suffolk when the owner or operator of the landfill is an authority created pursuant to § 15.2-5102 that has applied for a permit under § 404 of the federal Clean Water Act prior to January 1, 1989, and the owner or operator has received a permit under § 404 of the federal Clean Water Act and the Virginia Water Resources and Wetlands Protection Program, Article 2.2 (§ 62.1-44.15:20 et seq.) of Chapter 3.1 of Title 62.1, or (ii) construction of a new municipal solid waste landfill in Mecklenburg County and provided that the municipal solid waste landfills covered under clauses (i) and (ii) have complied with all other applicable federal and state environmental laws and regulations. It is expressly understood that while the provisions of this section provide an exemption to the general siting prohibition contained herein; it is not the intent in so doing to express an opinion on whether or not the project should receive the necessary environmental and regulatory permits to proceed. For the purposes of this section, the term "expansion of a municipal solid waste landfill" shall include the siting and construction of new cells or the expansion of existing cells at the same location.

B. The Director may issue a solid waste permit for the expansion of a municipal solid waste landfill located in a wetland only if the following conditions are met: (i) the proposed landfill site is at least 100 feet from any surface water body and at least one mile from any tidal wetland; (ii) the Director determines, based upon the existing condition of the wetland system, including, but not limited to, sedimentation, toxicity, acidification, nitrification, vegetation, and proximity to existing permitted waste disposal areas, roads or other structures, that the construction or restoration of a wetland system in another location in accordance with a Virginia Water Protection Permit approved by the State Water Control Board would provide higher quality wetlands; and (iii) the permit requires a minimum two-to-one wetlands mitigation ratio. This subsection shall not apply to the exemptions provided in clauses (i) and (ii) of subsection A.

C. Ground water monitoring shall be conducted at least quarterly by the owner or operator of any existing solid waste management landfill, accepting municipal solid waste, that was constructed on a wetland, has a potential hydrologic connection to such a wetland in the event of an escape of liquids from the facility, or is within a mile of such a wetland, unless the Director determines that less frequent monitoring is necessary. This provision shall not limit the authority of the Board or the Director to require that monitoring be conducted more frequently than quarterly. If the landfill is one that accepts only ash, ground water monitoring shall be conducted semiannually, unless more frequent monitoring is required by the Board or the Director. All results shall be reported to the Department.

D. This section shall not apply to landfills which impact less than two acres of nontidal wetlands.

E. For purposes of this section, "wetland" means any tidal wetland or nontidal wetland contiguous to any tidal wetland or surface water body.

F. There shall be no additional exemptions granted from this section unless (i) the proponent has submitted to the Department an assessment of the potential impact to wetlands, the need for the exemption, and the alternatives considered and (ii) the Department has made the information available for public review for at least 60 days prior to the first day of the next Regular Session of the General Assembly.

1999, c. 876; 2001, c. 767; 2005, c. 920; 2007, cc. 659, 813.

§ 10.1-1409. Revocation or amendment of permits.

A. Any permit issued by the Director pursuant to this article may be revoked, amended or suspended on any of the following grounds or on such other grounds as may be provided by the regulations of the Board:

1. The permit holder has violated any regulation or order of the Board, any condition of a permit, any provision of this chapter, or any order of a court, where such violation results in a release of harmful substances into the environment or poses a threat of release of harmful substances into the environment or presents a hazard to human health, or the violation is representative of a pattern of serious or repeated violations which, in the opinion of the Director, demonstrate the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;

2. The sanitary landfill or other facility used for disposal, storage or treatment of solid waste is maintained or operated in such a manner as to pose a substantial present or potential hazard to human health or the environment;

3. The sanitary landfill, or other facility used for the disposal, storage or treatment of solid waste, because of its location, construction or lack of protective construction or measures to prevent pollution, poses a substantial present or potential hazard to human health or the environment;

4. Leachate or residues from the sanitary landfill or other facility used for the disposal, storage or treatment of solid waste pose a substantial threat of contamination or pollution of the air, surface waters or ground water;

5. The person to whom the permit was issued abandons or ceases to operate the facility, or sells, leases or transfers the facility without properly transferring the permit in accordance with the regulations of the Board;

6. As a result of changes in key personnel, the Director finds that the requirements necessary for issuance of a permit are no longer satisfied;

7. The applicant has knowingly or willfully misrepresented or failed to disclose a material fact in applying for a permit or in his disclosure statement, or in any other report or certification required under this law or under the regulations of the Board, or has knowingly or willfully failed to notify the Director of any material change to the information in its disclosure statement; or

8. Any key personnel has been convicted of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction:

murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control Act, Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1; racketeering; violation of antitrust laws; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth or any other state and the Director determines that such conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner, as to warrant denial, revocation, amendment or suspension of the permit.

In making such determination, the Director shall consider:

(a) The nature and details of the acts attributed to key personnel;

(b) The degree of culpability of the applicant, if any;

(c) The applicant's policy or history of discipline of key personnel for such activities;

(d) Whether the applicant has substantially complied with all rules, regulations, permits, orders and statutes applicable to the applicant's activities in Virginia;

(e) Whether the applicant has implemented formal management controls to minimize and prevent the occurrence of such violations; and

(f) Mitigation based upon demonstration of good behavior by the applicant including, without limitation, prompt payment of damages, cooperation with investigations, termination of employment or other relationship with key personnel or other persons responsible for the violations or other demonstrations of good behavior by the applicant that the Director finds relevant to its decision.

B. The Director may amend or attach conditions to a permit when:

1. There is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect the public health and environment;

2. There is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water or ground water;

3. Investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from significant adverse effects; or

4. The amendment is necessary to meet changes in applicable regulatory requirements.

C. If the Director finds that solid wastes are no longer being stored, treated or disposed at a facility in accordance with Board regulations, he may revoke the permit issued for such facility. As a condition to granting or continuing in effect a permit, he may also require the permittee to provide perpetual care and surveillance of the facility.

D. If the Director summarily suspends a permit pursuant to subdivision 18 of § 10.1-1402, the Director shall hold a conference pursuant to § 2.2-4019 within forty-eight hours to consider whether to continue the suspension pending a hearing to amend or revoke the permit, or to issue any other appropriate order. Notice of the hearing shall be delivered at the conference or sent at the time the permit is suspended. Any person whose permit is suspended by the Director shall cease activity for which the permit was issued until the permit is reinstated by the Director or by a court.

1986, c. 492, § 10-272; 1988, cc. 569, 891; 1990, c. 919.

§ 10.1-1410. Financial responsibility for abandoned facilities; penalties.

A. The Board shall promulgate regulations which ensure that if a facility for the disposal, transfer, or treatment of solid waste is abandoned, the costs associated with protecting the public health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility. A facility that receives solid waste from a ship, barge or other vessel and is regulated under § 10.1-1454.1 shall be considered a transfer facility for the purposes of this subsection.

B. The regulations may include provisions for bonding, the creation of a trust fund to be maintained within the Department, self-insurance, other forms of commercial insurance, or such other mechanism as the Department may deem appropriate. Regulations governing the amount thereof shall take into consideration the potential for contamination and injury by the solid waste, the cost of disposal of the solid waste and the cost of restoring the facility to a safe condition. Any bonding requirements shall include a provision authorizing the use of personal bonds or other similar surety deemed sufficient to provide the protections specified in subsection A upon a finding by the Director that commercial insurance or surety bond cannot be obtained in the voluntary market due to circumstances beyond the control of the permit holder. Any commercial insurance or surety obtained in the voluntary market shall be written by an insurer licensed pursuant to Chapter 10 (§ 38.2-1000 et seq.) of Title 38.2.

C. No state governmental agency shall be required to comply with such regulations.

D. Forfeiture of any financial obligation imposed pursuant to this section shall not relieve any holder of a permit issued pursuant to the provisions of this article of any other legal obligations for the consequences of abandonment of any facility.

E. Any funds forfeited prior to July 1, 1995, pursuant to this section and the regulations of the Board shall be paid over to the county, city or town in which the abandoned facility is located. The county, city or town in which the facility is located shall expend forfeited funds as necessary to restore and maintain the facility in a safe condition.

F. Any funds forfeited on or after July 1, 1995, pursuant to this section and the regulations of the Board shall be paid over to the Director. The Director shall then expend forfeited funds as necessary solely to restore and maintain the facility in a safe condition. Nothing in this section shall require the Director to expend funds from any other source to carry out the activities contemplated under this subsection.

G. Any person who knowingly and willfully abandons a solid waste management facility without proper closure or without providing adequate financial assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who knowingly and willfully abandons a solid waste management facility without proper closure or without providing adequate financial assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

1986, c. 492, § 10-273; 1987, cc. 258, 291; 1988, c. 891; 1991, c. 702; 1993, c. 837; 1995, c. 739; 2000, cc. 137, 138.

§ 10.1-1410.1. Sanitary landfill final closure plans; notification requirements.

When any owner or operator of a sanitary landfill submits by certified mail a final closure plan in accordance with the requirements of this chapter and the regulations adopted thereunder, the Department shall within ninety days of its receipt of such plan, notify by certified mail the owner or operator of the Department's decision to approve or disapprove the final closure plan. The ninety-day period shall begin on the day the Department receives the plan by certified mail.

1988, cc. 332, 891.

§ 10.1-1410.2. Landfill postclosure monitoring, maintenance and plans.

A. The owner and operator of any solid waste landfill permitted under this chapter shall be responsible for ensuring that such landfill is properly closed in accordance with the Board's regulations and that the landfill is maintained and monitored after closure so as to protect human health and the environment. Maintenance and monitoring of solid waste landfills after closure shall be in accordance with the Board's regulations. At all times during the operational life of a solid waste landfill, the owner and operator shall provide to the Director satisfactory evidence of financial assurance consistent with all federal and state laws and regulations to ensure that the landfill will be:

1. Closed in accordance with the Board's regulations and the closure plan approved for the landfill; and

2. Monitored and maintained after closure, for such period of time as provided in the Board's regulations or for such additional period as the Director shall determine is necessary, in accordance with a postclosure plan approved by the Director.

B. Not less than 180 days prior to the completion of the postclosure monitoring and maintenance period as prescribed by the Board's regulations or by the Director, the owner or operator shall submit to the Director a certificate, signed by a professional engineer licensed in the Commonwealth, that postclosure monitoring and maintenance have been completed in accordance with the postclosure plan. The certificate shall be accompanied by an evaluation, prepared by a professional engineer

licensed in the Commonwealth and signed by the owner or operator, assessing and evaluating the landfill's potential for harm to human health and the environment in the event that postclosure monitoring and maintenance are discontinued. If the Director determines that continued postclosure monitoring or maintenance is necessary to prevent harm to human health or the environment, he shall extend the postclosure period for such additional time as the Director deems necessary to protect human health and the environment and shall direct the owner or operator to submit a revised postclosure plan and to continue postclosure monitoring and maintenance in accordance therewith. Requirements for financial assurance as set forth in subsection A shall apply throughout such extended postclosure period.

1999, cc. 584, 613, 947.

§ 10.1-1410.3. Operating burn pits at closed landfills.

The Department shall develop policies and procedures to allow for the infrequent burning of vegetative waste at permitted landfills that have ceased accepting waste but have not been released from postclosure care requirements. The policies and procedures developed shall include measures to ensure protection of public health and the environment, including (i) limits to the amount of vegetative waste that may be burned, (ii) the types of materials that may be burned, (iii) the frequency of the burning, (iv) the length of time the burning occurs, and (v) an evaluation of other alternatives for managing the vegetative waste. Nothing in this section shall be construed to prohibit a city or locality from exercising its authority to regulate such facilities by requiring among other things, permits or approvals.

2006, c. 19.

§ 10.1-1411. Regional and local solid waste management plans.

A. The Board is authorized to promulgate regulations specifying requirements for local and regional solid waste management plans.

To implement regional plans, the Governor may designate regional boundaries. The governing bodies of the counties, cities and towns within any region so designated shall be responsible for the development and implementation of a comprehensive regional solid waste management plan in cooperation with any planning district commission or commissions in the region. Where a county, city or town is not part of a regional plan, it shall develop and implement a local solid waste management plan in accordance with the Board's regulations. For purposes of this section, each region or locality so designated shall constitute a solid waste planning unit.

B. The Board's regulations shall include all aspects of solid waste management including waste reduction, recycling and reuse, storage, treatment, and disposal and shall require that consideration be given to the handling of all types of nonhazardous solid waste generated in the region or locality. In promulgating such regulations, the Board shall consider urban concentrations, geographic conditions, markets, transportation conditions, and other appropriate factors and shall provide for reasonable variances and exemptions thereto, as well as variances or exemptions from the minimum recycling rates

specified herein when market conditions beyond the control of a county, city, town, or region make such mandatory rates unreasonable.

C. The Board's regulations shall permit the following credits, provided that the aggregate of all such credits permitted shall not exceed five percentage points of the annual municipal solid waste recycling rate achieved for each solid waste planning unit:

1. A credit of one ton for each ton of recycling residue generated in Virginia and deposited in a landfill permitted under subsection M of § 10.1-1408.1;

2. A credit of two percentage points of the minimum recycling rate mandated for the solid waste planning unit for a source reduction program that is implemented with the solid waste planning unit. The existence and operation of such a program shall be certified by the solid waste planning unit;

3. A credit of one ton for each ton of any solid waste material that is reused; and

4. A credit of one ton for each ton of any nonmunicipal solid waste material that is recycled.

D. Each solid waste planning unit shall maintain a minimum recycling rate for municipal solid waste generated within the solid waste planning unit pursuant to the following schedule:

1. Except as provided in subdivision 2, each solid waste planning unit shall maintain a minimum 25 percent recycling rate; or

2. Each solid waste planning unit shall maintain a minimum 15 percent recycling rate if it has (i) a population density rate of less than 100 persons per square mile according to the most recent United States Census, or (ii) a not seasonally adjusted civilian unemployment rate for the immediately preceding calendar year that is at least 50 percent greater than the state average as reported by the Virginia Employment Commission for such year.

After July 1, 2007, no permit for a new sanitary landfill, incinerator, or waste-to-energy facility, or for an expansion, increase in capacity, or increase in the intake rate of an existing sanitary landfill, incinerator, or waste-to-energy facility shall be issued until the solid waste planning unit within which the facility is located has a solid waste management plan approved by the Board in accordance with the regulations, except as provided in this subsection. Failure to attain a mandated municipal solid waste recycling rate shall not be the sole cause for the denial of any permit or permit amendment, except as provided herein for sanitary landfills, incinerators, or waste-to-energy facilities, provided that all components of the solid waste management plan for the planning unit are in compliance with the regulations. The provisions of this subsection shall not be applicable to permits or permit amendments required for the operation or regulatory compliance of any existing facility, regardless of type, nor shall it be cause for the delay of any technical or administrative review of pending amendments thereto.

E. Each solid waste planning unit or locality with a population of greater than 100,000 persons according to the most recent United States census shall prepare and submit a recycling survey report to the Department of Environmental Quality annually. Each solid waste planning unit or locality with a population of 100,000 or less according to the most recent United States census shall prepare and submit

a recycling survey report to the Department of Environmental Quality once every four years. Recycling survey reports submitted once every four years shall only be required to include information for the most recent single year. The first reports submitted pursuant to this section shall be submitted by April 30, 2013, for the reporting year ending December 31, 2012.

F. If a county levies a consumer utility tax and the ordinance provides that revenues derived from such source, to the extent necessary, be used for solid waste disposal, the county may charge a town or its residents, establishments and institutions an amount not to exceed their pro rata cost, based upon population for such solid waste management if the town levies a consumer utility tax. This shall not prohibit a county from charging for disposal of industrial or commercial waste on a county-wide basis, including that originating within the corporate limits of towns.

1986, c. 492, § 10-274; 1987, c. 249; 1988, c. 891; 1989, c. 440; 1990, cc. 574, 781; 1991, c. 237; 1995, c. 216; 1997, c. 495; 2006, cc. 7, 40; 2012, c. 834.

§ 10.1-1412. Contracts by counties, cities and towns.

Any county, city or town may enter into contracts for the supply of solid waste to resource recovery facilities.

1986, c. 492, § 10-275; 1988, c. 891.

§ 10.1-1413. State aid to localities for solid waste disposal.

A. To assist localities in the collection, transportation, disposal and management of solid waste in accordance with federal and state laws, regulations and procedures, each county, city and town may receive for each fiscal year from the general fund of the state treasury sums appropriated for such purposes. The Director shall distribute such grants on a quarterly basis, in advance, in accordance with Board regulations, to those counties, cities and towns which submit applications therefor.

B. Any county, city or town applying for and receiving such funds shall utilize the funds only for the collection, transportation, disposal or management of solid waste. The Director shall cause the use and expenditure of such funds to be audited and all funds not used for the specific purposes stated herein shall be refunded to the general fund.

C. All funds granted under the provisions of this section shall be conditioned upon and subject to the satisfactory compliance by the county, city or town with applicable federal and state legislation and regulations. The Director may conduct periodic inspections to ensure satisfactory compliance.

1986, c. 492, § 10-276; 1988, c. 891.

§ 10.1-1413.1. Waste information and assessment program.

A. The Department shall report by June 30 of each year the amount of solid waste, by weight or volume, disposed of in the Commonwealth during the preceding calendar year. The report shall identify solid waste by the following categories: (i) municipal solid waste; (ii) construction and demolition debris; (iii) incinerator ash; (iv) sludge other than sludge that is land applied in accordance with § 62.1-44.19:3; and (v) tires. For each such category the report shall include an estimate of the amount

that was generated outside of the Commonwealth and the jurisdictions where such waste originated, if known. The report shall also estimate the amount of solid waste managed or disposed of by each of the following methods: (i) recycling; (ii) composting; (iii) landfilling; and (iv) incineration.

B. All permitted facilities that treat, store or dispose of solid waste shall provide the Department not more than annually, upon request, with such information in their possession as is reasonably necessary to prepare the report required by this section. At the option of the facility owner, the data collected may include an accounting of the facility's economic benefits to the locality where the facility is located including the value of disposal and recycling facilities provided to the locality at no cost or reduced cost, direct employment associated with the facility, and other economic benefits resulting from the facility during the preceding calendar year. No facility shall be required pursuant to this section to provide information that is a trade secret as defined in § 59.1-336.

C. This section shall not apply to captive waste management facilities.

1997, c. 512.

§ 10.1-1413.2. Requirements for landfill closure.

The Department shall prioritize the closure of landfills that are owned by local governments or political subdivisions, or that are located in the locality and have been abandoned in violation of this chapter, and are not equipped with liner and leachate control systems meeting the requirements of the Board's regulations. The prioritization shall be based on the greatest threat to human health and the environment. The Department shall establish a schedule, after public notice and a period for public comment, based upon that prioritization requiring municipal solid waste landfills to cease accepting solid waste in, and to prepare financial closure plans for, disposal areas permitted before October 9, 1993. No municipal solid waste landfill may continue accepting waste after 2020 in any disposal area not equipped with a liner system approved by the Department pursuant to a permit issued after October 9, 1993. Notwithstanding the provisions of subsection N of § 10.1-1408.1, failure by a landfill owner or operator to comply with the schedule established by the Department shall be a violation of this chapter. The provisions of this section shall not apply to municipal solid waste landfills utilizing double synthetic liner systems permitted between December 21, 1988, and October 9, 1993, that are part of a post-mining land use plan approved under Chapter 19 (§ 45.1-226 et seq.) of Title 45.1.

1999, cc. 584, 613, 947; 2000, c. 308; 2002, cc. 492, 518; 2004, c. 872.

Article 2.1 - Virginia Landfill Clean-up and Closure Fund

§ 10.1-1413.3. Testing private wells and public water supply wells near coal ash ponds; resident notification.

A. For the purposes of this section:

"Coal ash pond" means any natural topographic depression, man-made excavation, or diked area that (i) is designed to hold an accumulation of coal combustion residuals and liquids; (ii) treats, stores, or disposes of coal combustion residuals; and (iii) is located in the Chesapeake Bay watershed at the

Bremo Power Station in Fluvanna County, Chesapeake Energy Center in the City of Chesapeake, Chesterfield Power Station in Chesterfield County, or Possum Point Power Station in Prince William County.

"Utility" means the owner or operator of a coal ash pond.

B. No later than October 1, 2020, each utility shall submit to the Department a complete survey identifying all private wells and public water supply wells within 1.5 miles of any coal ash pond boundary. The utility shall use reasonable efforts to determine the locations of all such wells within 1.5 miles of the coal ash pond boundary and shall not rely solely on records maintained by the Virginia Department of Health or other public records. Such reasonable efforts shall include the distribution of notices that explain the purpose of the survey to each landowner. The utility shall distribute such notices through the United States mail to the owner of each parcel of land any part of which is located within 1.5 miles of a coal ash pond boundary and shall post a notice in at least one newspaper of general circulation in the locality.

2020, c. 625.

Article 3 - LITTER CONTROL AND RECYCLING

§ 10.1-1414. Definitions.

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

"Advisory Board" means the Litter Control and Recycling Fund Advisory Board.

"Beneficial use" means a use that is of benefit as a substitute for natural or commercial products and does not contribute to adverse effects on health or the environment. Beneficial use products are produced by facilities that include beneficiation facilities and recycling centers.

"Beneficiation facility" means a facility that uses methods including sorting by color, removal of contaminants, crushing, grinding, screening, grading, and monitoring of size and quality to produce clean, crushed glass cullet that satisfies the specifications of the end user of the cullet, including a manufacturer of glass containers or fiberglass.

"Disposable package" or "container" means all packages or containers intended or used to contain solids, liquids or materials and so designated.

"Fund" means the Litter Control and Recycling Fund.

"Litter" means all waste material disposable packages or containers but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing.

"Litter bag" means a bag, sack, or durable material which is large enough to serve as a receptacle for litter inside a vehicle or watercraft which is similar in size and capacity to a state approved litter bag.

"Litter receptacle" means containers acceptable to the Department for the depositing of litter.

"Person" means any natural person, corporation, association, firm, receiver, guardian, trustee, executor, administrator, fiduciary, representative or group of individuals or entities of any kind.

"Public place" means any area that is used or held out for use by the public, whether owned or operated by public or private interests.

"Recycling" means the process of separating a given waste material from the waste stream and processing it so that it may be used again as a raw material for a product which may or may not be similar to the original product.

"Recycling center" means a facility that (i) accepts recyclable materials that have already been separated at the source from municipal solid waste generated by either residential or commercial producers; (ii) processes source segregated recyclable materials, including mixed-paper fiber materials, metal and plastic postconsumer containers, and glass containers; and (iii) processes and sells recyclable materials according to end-user specifications. "Recycling center" does not include a facility for construction and demolition debris processing, sorting of municipal solid waste, incineration, sorting or processing of industrial waste, composting, or used tire processing.

"Sold within the Commonwealth" or "sales of the business within the Commonwealth" means all sales of retailers engaged in business within the Commonwealth and in the case of manufacturers and wholesalers, sales of products for use and consumption within the Commonwealth.

"Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any person or property may be transported upon a public highway, except devices moved by human power or used exclusively upon stationary rails or tracks.

"Watercraft" means any boat, ship, vessel, barge, or other floating craft.

1987, c. 234, § 10-277.1; 1988, c. 891; 1995, c. 417; 2018, c. 615.

§ 10.1-1415. Litter Control Program.

The Department shall support local, regional, and statewide programs to control, prevent, and eliminate litter from the Commonwealth and to encourage the recycling and beneficial use of discarded materials to the maximum practical extent. Every department of state government and all governmental units and agencies of the Commonwealth shall cooperate with the Department in the administration and enforcement of this article.

This article is intended to add to and coordinate existing litter control removal and recycling efforts, and not to terminate existing efforts nor, except as specifically stated, to repeal or affect any state law governing or prohibiting litter or the control and disposition of waste.

1987, c. 234, § 10-277; 1988, c. 891; 1989, c. 284; 1995, c. 417; 2018, c. 615.

§ 10.1-1415.1. Labeling of plastic container products required; penalty.

A. It shall be unlawful for any person to sell, expose for sale, or distribute any plastic bottle or rigid plastic container unless the container is labeled indicating the plastic resin used to produce the container. Such label shall appear on or near the bottom of the container, be clearly visible, and consist of

a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by three arrows curved at their midpoints, shall depict a clockwise path around the code number. The numbers and letters shall be as follows:

1. For polyethylene terepthalate, the letters "PETE" and the number 1.

2. For high density polyethylene, the letters "HDPE" and the number 2.

3. For vinyl, the letter "V" and the number 3.

4. For low density polyethylene, the letters "LDPE" and the number 4.

5. For polypropylene, the letters "PP" and the number 5.

6. For polystyrene, the letters "PS" and the number 6.

7. For any other plastic resin, the letters "OTHER" and the number 7.

B. As used in subsection A of this section:

"Container," unless otherwise specified, refers to "rigid plastic container" or "plastic bottle" as those terms are defined below.

"Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the container, accepts a screw-type, snap cap or other closure and has a capacity of sixteen fluid ounces or more but less than five gallons.

"Rigid plastic container" means any formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons.

C. Any person convicted of a violation of the provisions of subsection A of this section shall be punished by a fine of not more than fifty dollars. Each day of violation shall constitute a separate offense.

1990, c. 519.

§ 10.1-1415.2. Plastic holding device prohibited.

A. On and after January 1, 1993, it shall be unlawful to sell or offer for sale beverage containers connected to each other, using rings or other devices constructed of plastic which is not degradable or recyclable.

B. For the purpose of this section:

"Beverage container" means the individual bottle, can, jar, or other sealed receptacle, in which a beverage is sold, and which is constructed of metal, glass, or plastic, or other material, or any combination of these materials. "Beverage container" does not include cups or other similar open or loosely sealed containers.

"Degradable" means decomposition by photodegradation or biodegradation within a reasonable period of time upon exposure to natural elements.

1991, c. 209.

§ 10.1-1416. Collection and survey of litter.

Collections and surveys of the kinds of litter that are discarded in violation of the laws of the Commonwealth shall be conducted as the need is determined by the Department, after receipt of the recommendations of the Advisory Board, or as directed by the General Assembly. The survey shall include litter found throughout the Commonwealth, including standard metropolitan statistical areas and rural and recreational areas. To the fullest extent possible, in standard metropolitan statistical areas the Department of Transportation shall make use of local litter and trash collection services through arrangements with local governing bodies and appropriate agencies, in the discharge of the duties imposed by this section. The Department of Transportation shall report to the Governor, the General Assembly and the Department as to the amount of litter collected pursuant to this section and shall include in its report an analysis of litter types, their weights and volumes, and, where practicable, the recyclability of the types of products, packages, wrappings and containers which compose the principal amounts of the litter collected. The products whose packages, wrappings and containers constitute the litter shall include, but not be limited to the following categories:

1. Food for human or pet consumption;

2. Groceries;

3. Cigarettes and tobacco products;

4. Soft drinks and carbonated waters;

5. Beer and other malt beverages;

6. Wine;

7. Newspapers and magazines;

8. Paper products and household paper;

9. Glass containers;

10. Metal containers;

11. Plastic or fiber containers made of synthetic material;

12. Cleaning agents and toiletries;

13. Nondrug drugstore sundry products;

14. Distilled spirits; and

15. Motor vehicle parts.

1987, c. 234, § 10-277.3; 1988, c. 891; 1995, c. 417.

§ 10.1-1417. Enforcement of article.

The Department shall have the authority to contract with other state and local governmental agencies having law-enforcement powers for services and personnel reasonably necessary to carry out the provisions of this article. In addition, all law-enforcement officers in the Commonwealth and those employees of the Department of Wildlife Resources vested with police powers shall enforce the provisions of this article and regulations adopted hereunder, and are hereby empowered to arrest without warrant, persons violating any provision of this article or any regulations adopted hereunder. The foregoing enforcement officers may serve and execute all warrants and other process issued by the courts in enforcing the provisions of this article and regulations adopted hereunder.

1987, c. 234, § 10-277.4; 1988, c. 891; 2020, c. 958.

§ 10.1-1418. Penalty for violation of article.

Every person convicted of a violation of this article for which no penalty is specifically provided shall be punished by a fine of not more than fifty dollars for each such violation.

1987, c. 234, § 10-277.5; 1988, c. 891.

§ 10.1-1418.1. Improper disposal of solid waste; civil penalties.

A. It shall be the duty of all persons to dispose of their solid waste in a legal manner.

B. Any owner of real estate in this Commonwealth, including the Commonwealth or any political subdivision thereof, upon whose property a person improperly disposes of solid waste without the landowner's permission, shall be entitled to bring a civil action for such improper disposal of solid waste. When litter is improperly disposed upon land owned by the Commonwealth, any resident of the Commonwealth shall have standing to bring a civil action for such improper disposal of solid waste. When litter is improperly disposed of upon land owned by any political subdivision of this Commonwealth, any resident of that political subdivision shall have standing to bring a civil action for such improper disposal of solid waste. When any person improperly disposes of solid waste upon land within the jurisdiction of any political subdivision, that political subdivision shall have standing to bring a civil action for such improper disposal of solid waste.

C. In any civil action brought pursuant to the provisions of this section, when the plaintiff establishes by a preponderance of the evidence that (i) the solid waste or any portion thereof had been in possession of the defendant prior to being improperly disposed of on any of the properties referred to in subsection A of this section and (ii) no permission had been given to the defendant to place the solid waste on such property, there shall be a rebuttable presumption that the defendant improperly disposed of the solid waste. When the solid waste has been ejected from a motor vehicle, the owner or operator of such motor vehicle shall in any civil action be presumed to be the person ejecting such matter. However, such presumption shall be rebuttable by competent evidence. This presumption shall not be applicable to a motor vehicle rental or leasing company that owns the vehicle.

D. Whenever a court finds that a person has improperly disposed of solid waste pursuant to the provisions of this section, the court shall assess a civil penalty of up to $5,000 against such defendant. All

civil penalties assessed pursuant to this section shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title, except as provided in subsection E.

E. Any civil penalty assessed pursuant to this section in a civil action brought by a political subdivision shall be paid into the treasury of the political subdivision, except where the violator of this section is the political subdivision or its agent.

F. A court may award any person or political subdivision bringing suit pursuant to this section the cost of suit and reasonable attorney's fees.

1990, c. 430; 1991, c. 718; 1992, c. 27; 1997, c. 353.

§ 10.1-1418.2. Improper disposal of tires; exemption; penalty.

A. For the purposes of this section:

"Convenience center" means a collection point for the temporary storage of waste tires provided for individuals who choose to transport waste tires generated on their own premises to an established centralized point, rather than directly to a disposal facility. To be classified as a convenience center, the collection point shall not receive waste tires from collection vehicles that have collected waste from more than one real property owner. A convenience center shall have a system of regularly scheduled collections and may be covered or uncovered.

"Speculatively accumulated waste tires" means any waste tires that are accumulated before being used, reused, or reclaimed or in anticipation of potential use, reuse, or reclamation. Waste tires are not being accumulated speculatively when at least 75 percent of the waste tires accumulated are being removed from the site annually.

B. It shall be unlawful for any person to store, dispose of, speculatively accumulate or otherwise place more than 100 waste tires on public or private property, without first having obtained a permit as required by § 10.1-1408.1 or in a manner inconsistent with any local ordinance. No person shall allow others to store, dispose of, speculatively accumulate or otherwise place on his property more than 100 waste tires, without first having obtained a permit as required by § 10.1-1408.1.

C. Any person who knowingly violates any provision of this section shall be guilty of a Class 1 misdemeanor. However, any person who knowingly violates any provision of this section and such violation involves 500 or more waste tires shall be guilty of a Class 6 felony.

D. Salvage yards licensed by the Department of Motor Vehicles shall be exempt from this section, provided that they are holding fewer than 300 waste tires and that the waste tires do not pose a hazard or a nuisance or present a threat to human health and the environment.

E. As used in this section, the terms "store" and "otherwise place" shall not be construed as meaning the holding of fewer than 500 tires for bona fide uses related to the growing, harvesting or processing of agricultural or forest products.

F. The provisions of this section shall not apply to the (i) storage of less than 1,500 waste tires in a container at a convenience center or at a salvage yard licensed by the Department of Motor Vehicles, as long as the tires are not being speculatively accumulated, or (ii) storage of tires for recycling or for processing to use in manufacturing a new product, as long as the tires are not being speculatively accumulated.

G. The provisions of this section shall not apply to the storage of tires for recycling or for processing to use in manufacturing a new product, as long as the tires are not being speculatively accumulated.

H. Nothing in this section shall limit enforcement of the prohibitions against littering and the improper disposal of solid waste contained elsewhere in this chapter.

1994, c. 556; 1997, c. 353; 2003, c. 101.

§ 10.1-1418.3. Liability for large waste tire pile fires; exclusions.

A. For the purposes of this section:

"Tire pile" means an unpermitted accumulation of more than 100 waste tires.

B. For any tire pile that (i) is included in the survey of waste tire piles completed by the Department in 1993 or (ii) contains tires that were placed on property with the consent of the property owner, any person who owns or is legally responsible for such a tire pile that burns or is burned and any person who owns or is legally responsible for the property where the tire pile is located shall be responsible for the damage caused by the fire and by any waste or chemical constituents released into the environment to any person who sustains damage from the fire or from any released wastes or chemical constituents. It shall not be necessary for the claimant to show that the damage was caused by negligence on the part of such owners, legally responsible persons or other person who set or caused to be set the fire that burns the tires. Damages include, but are not limited to, the cost for any repair, replacement, remediation, or other appropriate action required as a result of the fire. This liability shall be in addition to, and not in lieu of, any other liability authorized by statute or regulation. Without limiting what constitutes consent, acceptance of compensation for the placement of tires on one's property shall be deemed to be consent.

C. Any person who sets or causes to be set the fire that burns the tire pile shall be responsible for the damage caused by the fire and by any waste or chemical constituents released into the environment to any person who sustains damage from the fire or from any released wastes or chemical constituents. It shall not be necessary for the claimant to show that the damage was caused by negligence on the part of such owners, legally responsible persons or other persons who set or caused to be set the fire that burns the tires. Damages shall include, but are not limited to, the cost for any repair, replacement, remediation, or other appropriate action required as a result of the fire. This liability shall be in addition to, and not in lieu of, any liability authorized by statute or regulation.

D. Any person who transfers waste tires for disposition and has taken all reasonable steps to ensure proper disposition of the waste tires shall not be held liable under the standard set forth in this section.

Documentation that a person has taken all reasonable steps to ensure proper disposition of the waste tires may include, but is not limited to, utilization of the Waste Tire Certification developed by the Department and any equivalent manifest or tracking system.

1996, c. 734; 2003, c. 101.

§ 10.1-1418.4. Removal of waste tire piles; cost recovery; right of entry.

Notwithstanding any other provision, upon the failure of any owner or operator to remove or remediate a waste tire pile in accordance with an order issued pursuant to this chapter or § 10.1-1186, the Director may enter the property and remove the waste tires. The Director is authorized to recover from the owner of the site or the operator of the tire pile the actual and reasonable costs incurred to complete such removal or remediation. If a request for reimbursement is not paid within 30 days of the receipt of a written demand for reimbursement, the Director may refer the demand for reimbursement to the Attorney General for collection or may secure a lien in accordance with § 10.1-1418.5.

2003, c. 101.

§ 10.1-1418.5. Lien for waste tire pile removal.

A. The Commonwealth shall have a lien, if perfected as hereinafter provided, on land subject to removal action under § 10.1-1418.4 for the amount of the actual and reasonable costs incurred to complete such removal action.

B. The Director shall perfect the lien given under the provisions of this section by filing, within six months after completion of the removal, in the clerk's office of the court of the county or city in which the land or any part of the land is situated, a statement consisting of (i) the name of the owner of record of the property sought to be charged, (ii) an itemized account of moneys expended for the removal work, and (iii) a brief description of the property to which the lien attaches.

C. It shall be the duty of the clerk of the court in whose office the statement described in subsection B is filed to record the statement in the deed books of the office and to index the statement in the general index of deeds in the name of the Commonwealth as well as the owner of the property, and shall show the type of such lien. From the time of such recording and indexing, all persons shall be deemed to have notice thereof.

D. Liens acquired under this section shall have priority as a lien second only to the lien of real estate taxes imposed upon the land.

E. Any party having an interest in the real property against which a lien has been filed may, within 60 days of such filing, petition the court of equity having jurisdiction wherein the property or some portion of the property is located to hold a hearing to review the amount of the lien. After reasonable notice to the Director, the court shall hold a hearing to determine whether such costs were reasonable. If the court determines that such charges were excessive, it shall determine the proper amount and order that the lien and the record be amended to show the new amount.

F. Liens acquired under this article shall be satisfied to the extent of the value of the consideration received at the time of transfer of ownership. Any unsatisfied portion shall remain as a lien on the property and shall be satisfied in accordance with this section. The proceeds from any lien shall be deposited in the Waste Tire Trust Fund established pursuant to § 10.1-1422.3. If an owner fails to satisfy a lien as provided herein, the Director may proceed to enforce the lien by a bill filed in the court of equity having jurisdiction wherein the property or some portion of the property is located.

2003, c. 101.

§ 10.1-1419. Litter receptacles; placement; penalty for violations.

A. The Board shall promulgate regulations establishing reasonable guidelines for the owners or persons in control of any property which is held out to the public as a place for assemblage, the transaction of business, recreation or as a public way who may be required to place and maintain receptacles acceptable to the Board.

In formulating such regulations the Board shall consider, among other public places, the public highways of the Commonwealth, all parks, campgrounds, trailer parks, drive-in restaurants, construction sites, gasoline service stations, shopping centers, retail store parking lots, parking lots of major industrial and business firms, marinas, boat launching areas, boat moorage and fueling stations, public and private piers and beaches and bathing areas. The number of such receptacles required to be placed as specified herein shall be determined by the Board and related to the need for such receptacles. Such litter receptacles shall be maintained in a manner to prevent overflow or spillage.

B. A person owning or operating any establishment or public place in which litter receptacles of a design acceptable to the Board are required by this section shall procure and place such receptacles at his own expense on the premises in accordance with Board regulations.

C. Any person who fails to place and maintain such litter receptacles on the premises in the number and manner required by Board regulation, or who violates the provisions of this section or regulations adopted hereunder shall be subject to a fine of twenty-five dollars for each day of violation.

1987, c. 234, § 10-277.6; 1988, c. 891.

§ 10.1-1420. Litter bag.

The Department may design and produce a litter bag bearing the state anti-litter symbol and a statement of the penalties prescribed for littering. Such litter bags may be distributed by the Department of Motor Vehicles at no charge to the owner of every licensed vehicle in the Commonwealth at the time and place of the issuance of a license or renewal thereof. The Department may make the litter bags available to the owners of watercraft in the Commonwealth and may also provide the litter bags at no charge to tourists and visitors at points of entry into the Commonwealth and at visitor centers to the operators of incoming vehicles and watercraft.

1987, c. 234, § 10-277.7; 1988, c. 891.

§ 10.1-1421. Responsibility for removal of litter from receptacles.

The responsibility for the removal of litter from litter receptacles placed at parks, beaches, campgrounds, trailer parks, and other public places shall remain upon those state and local agencies now performing litter removal services. The removal of litter from litter receptacles placed on private property used by the public shall remain the duty of the owner or operator of such private property.

1987, c. 234, § 10-277.8; 1988, c. 891.

§ 10.1-1422. Further duties of Department.

In addition to the foregoing duties the Department shall:

1. Serve as the coordinating agency between the various industry and business organizations seeking to aid in the recycling, beneficial use, and anti-litter effort;

2. Recommend to local governing bodies that they adopt ordinances similar to the provisions of this article;

3. Cooperate with all local governments to accomplish coordination of local recycling, beneficial use, and anti-litter efforts;

4. Encourage all voluntary local recycling, beneficial use, and anti-litter campaigns seeking to focus the attention of the public on the programs of the Commonwealth to control and remove litter and encourage recycling;

5. Investigate the availability of, and apply for, funds available from any private or public source to be used in the program provided for in this article;

6. Allocate funds annually for the study of available research and development in recycling and litter control, removal, and disposal, as well as study methods for implementation in the Commonwealth of such research and development. In addition, such funds may be used for the development of public educational programs concerning the litter problem and recycling. Grants shall be made available for these purposes to those persons deemed appropriate and qualified by the Board or the Department;

7. Investigate the methods and success of other techniques in recycling and the control of litter, and develop, encourage, and coordinate programs in the Commonwealth to utilize successful techniques in recycling and beneficial use and the control and elimination of litter; and

8. Expend, after receiving the recommendations of the Advisory Board, at least 95% of the funds deposited annually into the Fund pursuant to contracts with localities. The Department may enter into contracts with planning district commissions for the receipt and expenditure of funds attributable to localities which designate in writing to the Department a planning district commission as the agency to receive and expend funds hereunder.

1987, c. 234, § 10-277.9; 1988, c. 891; 1995, c. 417; 2006, c. 6; 2009, c. 409; 2018, c. 615.

§ 10.1-1422.01. Litter Control and Recycling Fund established; use of moneys; purpose of Fund.

A. All moneys collected from the taxes imposed under §§ 58.1-1700 through 58.1-1710 and by the taxes increased by Chapter 616 of the 1977 Acts of Assembly, shall be paid into the treasury and

credited to a special nonreverting fund known as the Litter Control and Recycling Fund, which is hereby established. The Fund shall be established on the books of the Comptroller. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it. The Director is authorized to release money from the Fund on warrants issued by the Comptroller after receiving and considering the recommendations of the Advisory Board for the purposes enumerated in subsection B of this section.

B. Moneys from the Fund shall be expended, according to the allocation formula established in subsection C of this section, for the following purposes:

1. Local litter prevention and recycling grants to localities that meet the criteria established in § 10.1-1422.04; and

2. Payment to (i) the Department to process the grants authorized by this article and (ii) the actual administrative costs of the Advisory Board. The Director shall assign one person in the Department to serve as a contact for persons interested in the Fund.

C. All moneys deposited into the Fund shall be expended pursuant to the following allocation formula:

1. Ninety-five percent for grants made to localities pursuant to subdivision B 1 of this section; and

2. Up to a maximum of 5% for the actual administrative expenditures authorized pursuant to subdivision B 2 of this section.

1995, c. 417; 2006, c. 6; 2009, c. 409.

§ 10.1-1422.02. Litter Control and Recycling Fund Advisory Board established; duties and responsibilities.

There is hereby created the Litter Control and Recycling Fund Advisory Board. The Advisory Board shall:

1. Review applications received by the Department for grants from the Fund and make recommendations to the Director for the award of all grants authorized pursuant to § 10.1-1422.01;

2. Promote the control, prevention and elimination of litter from the Commonwealth and encourage the recycling of discarded materials to the maximum practical extent; and

3. Advise the Director on such other litter control and recycling matters as may be requested by the Director or any other state agency.

1995, c. 417.

§ 10.1-1422.03. Membership, meetings, and staffing.

A. The Advisory Board shall consist of five persons appointed by the Governor. Three members shall represent persons paying the taxes which are deposited into the Fund and shall include one member appointed from nominations submitted by recognized industry associations representing retailers; one member appointed from nominations submitted by recognized industry associations representing soft drink distributors; and one member appointed from nominations submitted by recognized industry

associations representing beer distributors. One member shall be a local litter or recycling coordinator. One member shall be from the general public.

B. The initial terms of the members of the Advisory Board shall expire July 1, 1999, and five members shall be appointed or reappointed effective July 1, 1999, for terms as follows: one member shall be appointed for a term of one year; one member shall be appointed for a term of two years; one member shall be appointed for a term of three years; and two members shall be appointed for terms of four years unless found to violate subsection E of this section. Thereafter, all appointments shall be for terms of four years except for appointments to fill vacancies, which shall be for the unexpired term. They shall not receive a per diem, compensation for their service, or travel expenses.

C. The Advisory Board shall elect a chairman and vice-chairman annually from among its members. The Advisory Board shall meet at least twice annually on such dates and at such times as they determine. Three members of the Advisory Board shall constitute a quorum.

D. Staff support and actual associated administrative expenses of the Advisory Board shall be provided by the Department from funds allocated from the Fund.

E. Any member who is absent from three consecutive meetings of the Advisory Board, as certified by the Chairman of the Advisory Board to the Secretary of the Commonwealth, shall be dismissed as a member of the Advisory Board. The replacement of any dismissed member shall be appointed pursuant to subsection A of this section and meet the same membership criteria as the member who has been dismissed. Vacancies occurring other than by expiration of term shall be filled for the unexpired term. No person shall be eligible to serve on the Advisory Board for more than two terms.

1995, c. 417; 1998, c. 86; 2006, c. 6; 2014, c. 283.

§ 10.1-1422.04. Local litter prevention and recycling grants; eligibility and funding process.

The Director shall award local litter prevention and recycling grants to localities that apply for such grants and meet the eligibility requirements established in the Department's Guidelines for Litter Prevention and Recycling Grants (DEQ-LPR-2) which were in effect on January 1, 1995, and as may be amended by the Advisory Board after notice and opportunity to be heard by persons interested in grants awarded pursuant to this section. Grants awarded by the Director shall total the amount of Litter Control and Recycling Funds available annually as provided in subdivision B 1 of § 10.1-1422.01.

1995, c. 417.

§ 10.1-1422.05. Repealed.

Repealed by Acts 2009, c. 409, cl. 2.

§ 10.1-1422.06. Beneficiation facility as manufacturer for grant purposes.

For the purpose of any state or local economic development incentive grant, including a grant awarded pursuant to the provisions of Chapter 51 (§ 2.2-5100 et seq.) of Title 2.2, a beneficiation facility or recycling center as defined in § 10.1-1414 shall be considered a manufacturer.

2018, c. 615.

§ 10.1-1422.1. Disposal of waste tires.
The Department shall develop and implement a plan for the management and transportation of all waste tires in the Commonwealth.

1989, c. 630; 1993, c. 211.

§ 10.1-1422.2. Recycling residues; testing.
The Department shall develop and implement a plan for the testing of recycling residues generated in the Commonwealth to determine whether they are nonhazardous. The costs of conducting such tests shall be borne by the person wishing to dispose of such residues.

1990, c. 781.

§ 10.1-1422.3. Waste Tire Trust Fund established; use of moneys; purpose of Fund.
A. All moneys collected pursuant to § 58.1-642, minus the necessary expenses of the Department of Taxation for the administration of this tire recycling fee as certified by the Tax Commissioner, shall be paid into the treasury and credited to a special nonreverting fund known as the Waste Tire Trust Fund, which is hereby established. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it. The Department of Waste Management is authorized and empowered to release moneys from the Fund, on warrants issued by the State Comptroller, for the purposes enumerated in this section, or any regulations adopted thereunder.

B. Moneys from the Fund shall be expended to:

1. Pay the costs of implementing the waste tire plan authorized by § 10.1-1422.1, as well as the costs of any programs created by the Department pursuant to such a plan;

2. Provide partial reimbursement to persons for the costs of using waste tires or chips or similar materials; and

3. Pay the costs to remove waste tire piles from property pursuant to § 10.1-1418.4, to the extent funds are available from the increased revenues generated by the increased tire recycling fee collected beginning July 1, 2003, and ending July 1, 2006, in accordance with § 58.1-641.

C. Reimbursements under § 10.1-1422.4 shall not be made until regulations establishing reimbursement procedures have become effective.

1993, c. 211; 2003, c. 101.

§ 10.1-1422.4. Partial reimbursement for waste tires; eligibility; promulgation of regulations.
A. The intent of the partial reimbursement of costs under this section is to promote the use of waste tires by enhancing markets for waste tires or chips or similar materials.

B. Any person who (i) purchases waste tires generated in Virginia and who uses the tires or chips or similar materials for resource recovery or other appropriate uses as established by regulation may apply for partial reimbursement of the cost of purchasing the tires or chips or similar materials or (ii)

uses but does not purchase waste tires or chips or similar materials for resource recovery or other appropriate uses as established by regulation may apply for a reimbursement of part of the cost of such use.

C. To be eligible for the reimbursement (i) the waste tires or chips or similar materials shall be generated in Virginia, and (ii) the user of the waste tires shall be the end user of the waste tires or chips or similar materials. The end user does not have to be located in Virginia.

D. Reimbursements from the Waste Tire Trust Fund shall be made at least quarterly.

E. The Board shall promulgate regulations necessary to carry out the provisions of this section. The regulations shall include, but not be limited to:

1. Defining the types of uses eligible for partial reimbursement;

2. Establishing procedures for applying for and processing of reimbursements; and

3. Establishing the amount of reimbursement.

F. For the purposes of this section "end user" means (i) for resource recovery, the person who utilizes the heat content or other forms of energy from the incineration or pyrolysis of waste tires, chips or similar materials and (ii) for other eligible uses of waste tires, the last person who uses the tires, chips, or similar materials to make a product with economic value. If the waste tire is processed by more than one person in becoming a product, the end user is the last person to use the tire as a tire, as tire chips, or as similar material. A person who produces tire chips or similar materials and gives or sells them to another person to use is not an end user.

1993, c. 211; 1997, c. 627.

§ 10.1-1422.5. Repealed.

Repealed by Acts 2001, c. 569.

§ 10.1-1422.6. Used motor oil, other fluids for automotive engine maintenance, and oil filters; signs; establishment of statewide program.

A. The Department shall establish a statewide management program for used motor oil, other fluids for automotive engine maintenance, and oil filters. The program shall encourage the environmentally sound management of motor oil, other fluids used for automotive engine maintenance, and oil filters by (i) educating consumers on the environmental benefits of proper management, (ii) publicizing options for proper disposal, and (iii) promoting a management infrastructure that allows for the convenient recycling of these materials by the public. The Department may contract with a qualified public or private entity to implement this program.

B. The Department shall maintain a statewide list of sites that accept used (i) motor oil, (ii) other fluids used for automotive engine maintenance, and (iii) oil filters from the public. The list shall be updated at least annually. The Department shall create, maintain, and promote a toll-free hotline number and a website where consumers may receive information describing the location of collection sites in their

locality to properly dispose of used motor oil, other fluids for automotive engine maintenance, and oil filters.

C. The Department shall establish an ongoing outreach program to existing and potential collection sites that provides a point of contact for questions and disseminates information on (i) the way to establish a collection site, (ii) technical issues associated with being a collection site, and (iii) the benefits of continued participation in the program.

D. Any person who sells motor oil, other fluids used for automotive engine maintenance, or oil filters at the retail level and who does not accept the return of used motor oil, other fluids used for automotive engine maintenance, or oil filters shall post a sign that encourages the environmentally sound management of these products and provides a website address and toll-free hotline number where additional information on the locations of used motor oil, other fluids used for automotive engine maintenance, and oil filters collection sites are available. This sign shall be provided by the Department or its designee to all establishments selling motor oil, other fluids used for automotive engine maintenance, or oil filters. In determining the size and manner in which such signs may be affixed or displayed at the retail establishment, the Department shall give consideration to the space available in such retail establishments.

E. Any person who violates any provision of subsection D shall be subject to a fine of $25.

2001, c. 569; 2008, c. 646.

§ 10.1-1423. Notice to public required.

Pertinent portions of this article shall be posted along the public highways of the Commonwealth, at public highway entrances to the Commonwealth, in all campgrounds and trailer parks, at all entrances to state parks, forest lands and recreational areas, at all public beaches, and at other public places in the Commonwealth where persons are likely to be informed of the existence and content of this article and the penalties for violating its provisions.

1987, c. 234, § 10-277.11; 1988, c. 891.

§ 10.1-1424. Allowing escape of load material; penalty.

No vehicle shall be driven or moved on any highway unless the vehicle is constructed or loaded to prevent any of its load from dropping, sifting, leaking or otherwise escaping therefrom. However, sand or any substance for increasing traction during times of snow and ice may be dropped for the purpose of securing traction, or water or other substances may be sprinkled on a roadway in cleaning or maintaining the roadway by the Commonwealth or local government agency having that responsibility. Any person operating a vehicle from which any glass or objects have fallen or escaped which could constitute an obstruction or damage a vehicle or otherwise endanger travel upon a public highway shall immediately cause the highway to be cleaned of all glass or objects and shall pay any costs therefor. Violation of this section shall constitute a Class 1 misdemeanor.

1986, c. 757, § 10-211; 1987, c. 234, § 10-277.12; 1988, c. 891.

§ 10.1-1424.1. Material containing fully halogenated chloro-fluorocarbons prohibited; penalty.

A. On and after January 1, 1992, it shall be unlawful for any distributor or manufacturer knowingly to sell or offer for sale, for purposes of resale, any packaging materials that contain fully halogenated chloro-fluorocarbons as a blowing or expansion agent.

B. Any person convicted of a violation of the provisions of this section shall be guilty of a Class 3 misdemeanor.

1991, c. 101.

§ 10.1-1424.2. Products containing trichloroethylene prohibited; penalty.

As of January 1, 2004, it shall be unlawful for any person to knowingly sell or distribute for retail sale in the Commonwealth any product containing trichloroethylene if such product is manufactured for or commonly used as an adhesive for residential hardwood floor installation.

As of January 1, 2006, it shall be unlawful for any person to knowingly sell or distribute for retail sale in the Commonwealth any product manufactured on or after January 1, 2004, for any household or residential purpose if such product contains trichloroethylene. Any person convicted of a violation of this section shall be guilty of a Class 3 misdemeanor.

2003, c. 620.

§ 10.1-1425. Preemption of certain local ordinances.

The provisions of this article shall supersede and preempt any local ordinance which attempts to regulate the size or type of any container or package containing food or beverage or which requires a deposit on a disposable container or package.

1987, c. 234, § 10-277.14; 1988, c. 891.

Article 3.1 - LEAD ACID BATTERIES

§ 10.1-1425.1. Lead acid batteries; land disposal prohibited; penalty.

A. It shall be unlawful for any person to place a used lead acid battery in mixed municipal solid waste or to discard or otherwise dispose of a lead acid battery except by delivery to a battery retailer or wholesaler, or to a secondary lead smelter, or to a collection or recycling facility authorized under the laws of this Commonwealth or by the United States Environmental Protection Agency. As used in this article, the term "lead acid battery" shall mean any wet cell battery.

B. It shall be unlawful for any battery retailer to dispose of a used lead acid battery except by delivery to (i) the agent of a battery wholesaler or a secondary lead smelter, (ii) a battery manufacturer for delivery to a secondary lead smelter, or (iii) a collection or recycling facility authorized under the laws of this Commonwealth or by the United States Environmental Protection Agency.

C. Any person found guilty of a violation of this section shall be punished by a fine of not more than fifty dollars. Each battery improperly disposed of shall constitute a separate violation.

1990, c. 520.

§ 10.1-1425.2. Collection of lead acid batteries for recycling.

Any person selling lead acid batteries at retail or offering lead acid batteries for retail sale in the Commonwealth shall:

1. Accept from customers, at the point of transfer, used lead acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers; and

2. Post written notice which shall be at least 8 1/2 inches by 11 inches in size and which shall include the universal recycling symbol and the following language: (i) "It is illegal to discard a motor vehicle battery or other lead acid battery," (ii) "Recycle your used batteries," and (iii) "State law requires us to accept used motor vehicle batteries or other lead acid batteries for recycling, in exchange for new batteries purchased."

1990, c. 520.

§ 10.1-1425.3. Inspection of battery retailers; penalty.

The Department shall produce, print, and distribute the notices required by § 10.1-1425.2 to all places in the Commonwealth where lead acid batteries are offered for sale at retail. In performing its duties under this section, the Department may inspect any place, building, or premises subject to the provisions of § 10.1-1425.2. Authorized employees of the Department may issue warnings to persons who fail to comply with the provisions of this article. Any person found guilty of failing to post the notice required under § 10.1-1425.2 after receiving a warning to do so pursuant to this section shall be punished by a fine of not more than fifty dollars.

1990, c. 520.

§ 10.1-1425.4. Lead acid battery wholesalers; penalty.

A. It shall be unlawful for any person selling new lead acid batteries at wholesale to not accept from customers at the point of transfer, used lead acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers. A person accepting batteries in transfer from a battery retailer shall be allowed a period not to exceed ninety days to remove batteries from the retail point of collection.

B. Any person found guilty of a violation of this section shall be punished by a fine of not more than fifty dollars. Each battery unlawfully refused by a wholesaler or not removed from the retail point of collection within ninety days shall constitute a separate violation.

1990, c. 520.

§ 10.1-1425.5. Construction of article.

The provisions of this article shall not be construed to prohibit any person who does not sell new lead acid batteries from collecting and recycling such batteries.

1990, c. 520.

Article 3.2 - RECYCLING DUTIES OF STATE AGENCIES AND STATE UNIVERSITIES

§ 10.1-1425.6. Recycling programs of state agencies.

A. It shall be the duty of each baccalaureate public institution of higher education in the Commonwealth and state agency of the Commonwealth, including the General Assembly, to establish programs for the use of recycled materials and for the collection, to the extent feasible, of all recyclable materials used or generated by such entities, including, at a minimum, used motor oil, glass, aluminum, office paper and corrugated paper. Such programs shall be in accordance with the programs and plans developed by the Department of Waste Management, which shall serve as the lead agency for the Commonwealth's recycling efforts. The Department shall develop such programs and plans by July 1, 1991.

B. In fulfilling its duties under this section, each agency of the Commonwealth shall implement procedures for (i) the collection and storage of recyclable materials generated by such agency, (ii) the disposal of such materials to buyers, and (iii) the reduction of waste materials generated by such agency.

1990, c. 616.

§ 10.1-1425.7. Duty of the Department of Small Business and Supplier Diversity.

The Department of Small Business and Supplier Diversity shall assist the Department by encouraging and promoting the establishment of appropriate recycling industries in the Commonwealth.

1990, c. 616; 1996, cc. 589, 599; 2013, c. 482.

§ 10.1-1425.8. Department of Transportation; authority and duty.

The Department of Transportation is authorized to conduct recycling research projects, including the establishment of demonstration projects which use recycled products in highway construction and maintenance. Such projects may include by way of example and not by limitation the use of ground rubber from used tires or glass for road surfacing, resurfacing and sub-base materials, as well as the use of plastic or mixed plastic materials for ground or guard rail posts, right-of-way fence posts and sign supports.

The Department of Transportation shall periodically review and revise its bid procedures and specifications to encourage the use of products and materials with recycled content in its construction and maintenance programs.

The Commissioner of Highways may continue to provide for the collection of used motor oil and motor vehicle antifreeze from the general public at maintenance facilities in the County of Bath. The Commissioner of Highways may designate the source of funding for the collection and disposal of these materials.

1990, c. 616; 1993, c. 801; 1994, c. 419; 1995, c. 109; 1996, c. 290.

§ 10.1-1425.9. Duties of the Department of Education.

With the assistance of the Department of Waste Management, the Department of Education shall develop by July 1, 1992, guidelines for public schools regarding (i) the use of recycled materials, (ii) the collection of recyclable materials, and (iii) the reduction of solid waste generated in such school's offices, classrooms and cafeterias.

1990, c. 616.

Article 3.3 - POLLUTION PREVENTION PROGRAM

§ 10.1-1425.10. Definitions.

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

"Pollution prevention" means eliminating or reducing the use, generation or release at the source of environmental waste. Methods of pollution prevention include, but are not limited to, equipment or technology modifications; process or procedure modifications; reformulation or redesign of products; substitution of raw materials; improvements in housekeeping, maintenance, training, or inventory control; and closed-loop recycling, onsite process-related recycling, reuse or extended use of any material utilizing equipment or methods which are an integral part of a production process. The term shall not include any practice which alters the physical, chemical, or biological characteristics or the volume of an environmental waste through a process or activity which itself is not integral to and necessary for the production of a product or the providing of a service, and shall not include treatment, increased pollution control, off-site or nonprocess-related recycling, or incineration.

"Toxic or hazardous substance" means (i) all of the chemicals 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), and (ii) all of the chemicals listed pursuant to §§ 101(14) and 102 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. (P.L. 92-500).

1993, c. 459; 1994, c. 169.

§ 10.1-1425.11. Establishment of pollution prevention policy.

It shall be the policy of the Commonwealth (i) that the Commonwealth should encourage pollution prevention activities by removing barriers and providing incentives and assistance, and (ii) that the generation of environmental waste should be reduced or eliminated at the source, whenever feasible; environmental waste that is generated should be reused whenever feasible; environmental waste that cannot be reduced or reused should be recycled whenever feasible; environmental waste that cannot be reduced, reused, or recycled should be treated in an environmentally safe manner; and disposal should be employed only as a last resort and should be conducted in an environmentally safe manner. It shall also be the policy of the Commonwealth to minimize the transfer of environmental wastes from one environmental medium to another.

1993, c. 459.

§ 10.1-1425.12. Pollution prevention assistance program.

The Department shall establish a voluntary pollution prevention assistance program designed to assist all persons in promoting pollution prevention measures in the Commonwealth. The program shall emphasize assistance to local governments and businesses that have inadequate technical and financial resources to obtain information and to assess and implement pollution prevention measures. The program may include, but shall not be limited to:

1. Establishment of a pollution prevention clearinghouse for all available information concerning waste reduction, waste minimization, source reduction, economic and energy savings, and pollution prevention;

2. Assistance in transferring information concerning pollution prevention technologies through workshops, conferences and handbooks;

3. Cooperation with programs at baccalaureate institutions of higher education to develop pollution prevention curricula and training;

4. Technical assistance to generators of toxic or hazardous substances, including onsite consultation to identify alternative methods that may be applied to prevent pollution; and

5. Researching and recommending incentive programs for innovative pollution prevention programs.

To be eligible for onsite technical assistance, a generator of toxic or hazardous substances must agree to allow information regarding the results of such assistance to be shared with the public, provided that the identity of the generator shall be made available only with its consent and trade-secret information shall remain protected.

1993, c. 459; 1994, c. 169.

§ 10.1-1425.13. Pollution prevention advisory panels.

The Director is authorized to name qualified persons to pollution prevention advisory panels to assist the Department in administering the pollution prevention assistance program. Panels shall include members representing different areas of interest in and potential support for pollution prevention, including industry, education, environmental and public interest groups, state government and local government.

1993, c. 459.

§ 10.1-1425.14. Pilot projects.

The Department may sponsor pilot projects to develop and demonstrate innovative technologies and methods for pollution prevention. The results of all such projects shall be available for use by the public, but trade secret information shall remain protected.

1993, c. 459.

§ 10.1-1425.15. Waste exchange.

The Department may establish an industrial environmental waste material exchange that provides for the exchange, between interested persons, of information concerning (i) particular quantities of

industrial environmental waste available for recovery; (ii) persons interested in acquiring certain types of industrial environmental waste for purposes of recovery; and (iii) methods for the treatment and recovery of industrial environmental waste. The industrial environmental waste materials exchange may be operated under one or more reciprocity agreements providing for the exchange of the information for similar information from a program operated in another state. The Department may contract for a private person or public entity to establish or operate the industrial environmental waste materials exchange. The Department may prescribe rules concerning the establishment and operation of the industrial environmental waste materials exchange, including the setting of subscription fees to offset the cost of participating in the exchange.

1993, c. 459.

§ 10.1-1425.16. Trade secret protection.

All trade secrets obtained pursuant to this article by the Department or its agents shall be held as confidential.

1993, c. 459.

§ 10.1-1425.17. Evaluation report.

The Department shall submit an annual report to the Governor and the appropriate committees of the General Assembly. The report shall include an evaluation of its pollution prevention activities. The report shall be submitted by December 1 of each year, beginning in 1994. The report shall include, to the extent available, information regarding progress in expanding pollution prevention activities in the Commonwealth.

1993, c. 459.

§ 10.1-1425.18. Pollution prevention grants.

The Department may make grants to identify pollution prevention opportunities and to study or determine the feasibility of applying specific technologies and methods to prevent pollution. Persons who use, generate or release environmental waste may receive grants under this section.

1993, c. 459.

§ 10.1-1425.19. Inspections and enforcement actions by the Department.

A. The Department shall seek to ensure, where appropriate, that any inspections conducted pursuant to Chapters 13 (§ 10.1-1300 et seq.) and 14 (§ 10.1-1400 et seq.) of this title and Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 (i) are multimedia in approach; (ii) are performed by teams of inspectors authorized to represent the air, water and solid waste programs within the Department; and (iii) minimize duplication of inspections, reporting requirements, and enforcement efforts.

B. The Department may allow any person found to be violating any law or standard for which the Department has enforcement jurisdiction to develop a plan to reduce the use or generation of toxic or hazardous substances through pollution prevention incentives or initiatives and, to the maximum extent possible, implement the plan as part of coming into compliance with the violated law or

standard. This shall in no way affect the Commonwealth's ability and responsibility to seek penalties in enforcement activities.

1994, c. 169.

Article 3.4 - REDUCTION OF HEAVY METALS IN PACKAGING ACT

§ 10.1-1425.20. Findings and intent.

A. The General Assembly finds that:

1. The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;

2. Packaging comprises a significant percentage of the overall waste stream;

3. The presence of heavy metals in packaging is a concern because of the potential presence of heavy metals in residue from manufacturers' recycling processes, in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled; and

4. Lead, mercury, cadmium, and hexavalent chromium, on the basis of scientific and medical evidence, are of particular concern.

B. It is the intent of the General Assembly to:

1. Reduce the toxicity of packaging;

2. Eliminate the addition of heavy metals to packaging; and

3. Achieve reductions in toxicity without impeding or discouraging the expanded use of recovered material in the production of products, packaging, and its components.

1994, c. 944.

§ 10.1-1425.21. Definitions.

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

"Distributor" means any person who takes title to products or packaging purchased for resale.

"Intentional introduction" means the act of deliberately using a regulated heavy metal in the formulation of a package or packaging component where its continued presence in the final package or packaging component is to provide a specific characteristic or quality. The use of a regulated heavy metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, whereupon the incidental retention of a residue of the metal in the final package or packaging component is neither desired nor deliberate is not considered to be "intentional introduction" where the final package or packaging component is in compliance with subsection C of § 10.1-1425.22.

"Manufacturer" means any person that produces products, packages, packaging, or components of products or packaging.

"Package" means any container which provides a means of marketing, protecting, or handling a product, including a unit package, intermediate package, or a shipping container, as defined in the American Society for Testing and Materials (ASTM) specification D996. The term includes, but is not limited to, unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrapping and wrapping film, bags, and tubs.

"Packaging component" means any individual assembled part of a package, including, but not limited to, interior and exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels. Tin-plated steel that meets ASTM specification A-623 shall be considered as a single package component. Electro-galvanized coated steel that meets ASTM specification A-525, and hot-dipped coated galvanized steel that meets ASTM specification A-879 shall be treated in the same manner as tin-plated steel.

1994, c. 944; 1995, c. 115.

§ 10.1-1425.22. Schedule for removal of incidental amounts of heavy metals.

A. On and after July 1, 1995, no manufacturer or distributor shall offer for sale, sell, or offer for promotional purposes in the Commonwealth a package or packaging component which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives containing lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution, and which exceeds a concentration level established by this article. This prohibition shall not apply to the incidental presence of any of these elements in a package or packaging component.

B. On and after July 1, 1995, no manufacturer or distributor shall offer for sale, sell, or offer for promotional purposes in the Commonwealth a product in a package which includes, in the package itself or in any of the packaging components, inks, dyes, pigments, adhesives, stabilizers, or any other additives containing lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution, and which exceeds a concentration level established by this article. This prohibition shall not apply to the incidental presence of any of these elements in a package or packaging component.

C. The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed the following:

1. Six hundred parts per million by weight on and after July 1, 1995;

2. Two hundred fifty parts per million by weight on and after July 1, 1996; and

3. One hundred parts per million by weight on and after July 1, 1997.

D. Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using ASTM test methods, as revised, or U.S. Environmental Protection Agency Test Methods for Evaluating Solid Waste, S-W 846, as revised.

1994, c. 944.

§ 10.1-1425.23. Exemptions.

The following packaging and packaging components shall be exempt from the requirements of this Act:

1. Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1995;

2. Packages or packaging components to which lead, cadmium, mercury or hexavalent chromium has been added in the manufacturing, forming, printing or distribution process in order to comply with health or safety requirements of federal law, provided that (i) the manufacturer of a package or packaging component must petition the Board for any exemption for a particular package or packaging component; (ii) the Board may grant an exemption for up to two years if warranted by the circumstances; and (iii) such an exemption may, upon reapplication for exemption and meeting the criterion of this subdivision, be renewed at two-year intervals;

3. Packages and packaging components to which lead, cadmium, mercury or hexavalent chromium has been added in the manufacturing, forming, printing or distribution process for which there is no feasible alternative, provided that (i) the manufacturer of a package or packaging component must petition the Board for any exemption for a particular package or packaging component; (ii) the Board may grant an exemption for up to two years if warranted by the circumstances; and (iii) such an exemption may, upon reapplication for exemption and meeting the criterion of this subdivision, be renewed at two-year intervals. For purposes of this subdivision, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents;

4. Packages and packaging components that would not exceed the maximum contaminant levels established but for the addition of recovered or recycled materials; and

5. Packages and packaging components used to contain alcoholic beverages, as defined in § 4.1-100, bottled prior to July 1, 1992.

1994, c. 944; 1995, c. 115.

§ 10.1-1425.24. Certificate of compliance.

A. On and after July 1, 1995, each manufacturer or distributor of packaging or packaging components shall make available to purchasers, the Department, and the public, upon request, certificates of compliance which state that the manufacturer's or distributor's packaging or packaging components comply with, or are exempt from, the requirements of this article.

B. If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component that results in an increase in the level of heavy metals higher than the original certificate of compliance, the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated package or packaging component.

1994, c. 944.

§ 10.1-1425.25. Promulgation of regulations.

The Board may promulgate regulations if regulations are necessary to implement and manage the provisions of this article. The Director is authorized to name qualified persons to an advisory panel of affected interests and the public to assist the Department in implementing the provisions of this article.

1994, c. 944.

Article 3.5 - CATHODE RAY TUBES AND MERCURY THERMOSTATS RECYCLING

§ 10.1-1425.26. Cathode ray tube and mercury thermostat special waste recycling program.

A. As used in this section "cathode ray tube" means an intact glass tube used to provide the visual display in televisions, computer monitors, oscilloscopes and similar scientific equipment, but does not include the other components of an electronic product containing a cathode ray tube even if the product and the cathode ray tube are disassembled.

B. The Board shall promulgate regulations to encourage the recycling of thermostats containing mercury, cathode ray tubes, and electronics products.

C. Any locality may, by ordinance, prohibit the disposal of thermostats containing mercury and cathode ray tubes in any waste-to-energy or solid waste disposal facility within its jurisdiction, provided the locality has implemented a recycling program that is capable of handling all thermostats containing mercury and cathode ray tubes generated within its jurisdiction. However, no such ordinance shall contain any provision that penalizes anyone other than the initial generator of such thermostats containing mercury and cathode ray tubes.

2003, c. 743; 2008, c. 12; 2010, c. 4.

Article 3.6 - COMPUTER RECOVERY AND RECYCLING ACT

§ 10.1-1425.27. Definitions.

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

"Brand" means the name, symbol, logo, trademark, or other information that identifies a product rather than the components of the product.

"Computer equipment" means a desktop or notebook computer and may include a computer monitor or other display device. Computer does not include:

1. A television or any telecommunication system device that can receive moving pictures and sound broadcast over a distance, including a television tuner or a display device peripheral to a computer in which the display device contains a television tuner;

2. A desktop or notebook computer or computer monitor or other display device that is functionally or physically a part of, connected to, or integrated within a larger piece of equipment and designed or

intended for use in an industrial, governmental, commercial, research and development, or medical setting, including diagnostic, monitoring, security, sensing, or control equipment; or

3. Any monitor or computer equipment contained within a clothes washer, clothes dryer, refrigerator, refrigerator and freezer, microwave oven, conventional oven or range, dishwasher, room air conditioner, dehumidifier, or air purifier.

"Consumer" means an individual who uses computer equipment that is purchased primarily for personal or home business use.

"Manufacturer" means a person who in any calendar year:

1. Manufactures or manufactured computer equipment in excess of 500 units under a brand that:

a. The person owns or owned; or

b. The person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

2. Sells or sold computer equipment in excess of 500 units manufactured by others under a brand that:

a. The person owns or owned; or

b. The person is or was licensed to use, other than under a license to manufacture computer equipment for delivery exclusively to or at the order of the licensor;

3. Manufactures or manufactured computer equipment in excess of 500 units without affixing a brand;

4. Manufactures or manufactured computer equipment in excess of 500 units to which the person affixes or affixed a brand that:

a. The person does not or has not owned; or

b. The person is not or was not licensed to use; or

5. Imports or imported computer equipment in excess of 500 units manufactured outside the United States into the United States unless at the time of importation the company or licensee that sells or sold the computer equipment to the importer has or had assets or a presence in the United States sufficient to be considered the manufacturer.

2008, c. 541.

§ 10.1-1425.28. Applicability.

A. The collection, recycling, and reuse provisions of this article apply to computer equipment used and returned to the manufacturer by a consumer in this state and do not impose any obligation on an owner or operator of a solid waste facility.

B. This article does not apply to:

1. Any part of a motor vehicle, a personal digital assistant, or a telephone;

2. A consumer's lease of computer equipment or a consumer's use of computer equipment under a lease agreement; or

3. The sale or lease of computer equipment to an entity when the manufacturer and the entity enter into a contract that effectively addresses the collection, recycling, and reuse of computer equipment that has reached the end of its useful life.

2008, c. 541.

§ 10.1-1425.29. Manufacturer recovery plan.

A. Before a manufacturer may offer computer equipment for sale in the Commonwealth, the manufacturer shall:

1. Adopt and implement a recovery plan; and

2. Affix a permanent, readily visible label to the computer equipment with the manufacturer's brand.

B. The recovery plan shall enable a consumer to recycle computer equipment without paying a separate fee at the time of recycling and shall include provisions for:

1. The collection from a consumer of any computer equipment that has reached the end of its useful life and is labeled with the manufacturer's brand; and

2. Recycling or reuse of computer equipment collected under subdivision 1.

C. The collection of computer equipment provided under the recovery plan must be reasonably convenient and available to consumers in the Commonwealth and designed to meet the collection needs of consumers in the Commonwealth. Examples of collection methods that alone or combined meet the convenience requirements of this section include:

1. A system by which the manufacturer or the manufacturer's designee offers the consumer a system for returning computer equipment by mail at no charge to the consumer;

2. A system using a physical collection site that the manufacturer or the manufacturer's designee operates and to which the consumer may return computer equipment; and

3. A system using collection events held by the manufacturer or the manufacturer's designee at which the consumer may return computer equipment.

D. Collection services under this section may use existing collection and consolidation infrastructure for handling computer equipment and should encourage the inclusion of systems jointly managed by a group of manufacturers, electronic recyclers and repair shops, recyclers of other commodities, reuse organizations, not-for-profit corporations, retailers, recyclers, and other suitable operations. If a manufacturer or its designee offers a mail-back system as described in subdivision C 1, either individually, by working together with a group of manufacturers, or by working with others, it shall be deemed to meet the convenience requirements of this section.

E. The recovery plan shall include information for the consumer on how and where to return the manufacturer's computer equipment. The manufacturer:

1. Shall include collection, recycling, and reuse information on the manufacturer's publicly accessible website;

2. Shall provide collection, recycling, and reuse information to the Department; and

3. May include collection, recycling, and reuse information in the packaging or in other materials that accompany the manufacturer's computer equipment when the equipment is sold.

F. Information about collection, recycling, and reuse on a manufacturer's publicly accessible website does not constitute a determination by the Department that the manufacturer's recovery plan or actual practices are in compliance with this article.

G. If more than one person is a manufacturer of a certain brand of computer equipment as defined by § 10.1-1425.27, any of those persons may assume responsibility for and satisfy the obligations of a manufacturer under this article for that brand. If none of those persons assumes responsibility or satisfies the obligations of a manufacturer for the computer equipment of that brand, any of those persons may be considered to be the responsible manufacturer for purposes of this article.

H. The obligations under this article of a manufacturer who manufactures or manufactured computer equipment, or sells or sold computer equipment manufactured by others, under a brand that was previously used by a different person in the manufacture of the computer equipment extends to all computer equipment bearing that brand regardless of its date of manufacture.

2008, c. 541.

§ 10.1-1425.30. Reporting requirements.

Each manufacturer shall publish a report on its publicly accessible website no later than January 31 of each year that includes:

1. The name and contact information of the representative responsible for the manufacturer's recovery plan;

2. The weight of computer equipment collected, recycled, and reused during the preceding calendar year; and

3. Documentation certifying that the collection, recycling, and reuse of computer equipment complies with § 10.1-1425.38 regarding sound environmental management.

2008, c. 541.

§ 10.1-1425.31. Retailer responsibility.

A person who is a retailer of computer equipment may not sell or offer to sell new computer equipment in the Commonwealth unless the equipment is labeled with the manufacturer's label and the manufacturer has a recovery plan that complies with the provisions of this article and is accessible on the

manufacturer's website. A retailer who is not a manufacturer is not required to collect computer equipment for recycling or reuse under this article.

2008, c. 541.

§ 10.1-1425.32. Liability for information stored on computers.

A manufacturer, manufacturer's designee, or retailer of computer equipment is not liable in any way for information in any form that a consumer leaves on computer equipment that is collected, recycled, or reused under this article, provided that the manufacturer's website (i) conspicuously states such disclaimer of liability and (ii) provides detailed information regarding how a consumer may erase such information from the computer equipment or protect information that the consumer leaves on such computer equipment from disclosure. This article does not exempt a person from potential liability under other federal or state law.

2008, c. 541.

§ 10.1-1425.33. Department responsibilities.

A. The Department shall maintain a list of manufacturers on its website that have notified the Department of the availability of a recovery plan for the Commonwealth. Covered computer equipment from manufacturers on that list may be sold in or into the Commonwealth.

B. The Department shall provide links to the following information on its website:

1. Manufacturers' collection, recycling, and reuse programs, including manufacturers' recovery plans, provided by manufacturers pursuant to this article; and

2. The potential security issues regarding personal information stored on computer equipment that is collected, recycled, or reused.

2008, c. 541.

§ 10.1-1425.34. Enforcement.

The Office of the Attorney General may enforce the provisions of this article by taking enforcement action against a manufacturer or retailer that fails to comply with this article.

2008, c. 541.

§ 10.1-1425.35. Financial and proprietary information.

Financial or proprietary information submitted to the Department under this article is exempt from public disclosure.

2008, c. 541.

§ 10.1-1425.36. Fees not authorized.

This article does not authorize the Department to impose a fee, including a recycling fee or registration fee, on a consumer, manufacturer, retailer, or person who recycles or reuses computer equipment.

2008, c. 541.

§ 10.1-1425.37. Consumer responsibilities.

A consumer is responsible for any information in any form left on the consumer's computer equipment that is collected, recycled, or reused.

2008, c. 541.

§ 10.1-1425.38. Sound environmental management.

All computer equipment collected under this article shall be recycled or reused in a manner that complies with federal, state, and local law.

2008, c. 541.

Article 3.7 - RECHARGEABLE BATTERY RECYCLING

§ 10.1-1425.39. Rechargeable battery recycling and disposal program.

A. As used in this section "rechargeable battery" means any removable, dry-cell, rechargeable battery weighing less than two pounds consisting of one or more electrically connected electrochemical cells that are designed to receive, store, and deliver electric energy.

B. Any locality may, by ordinance, prohibit the disposal of rechargeable batteries in any waste-to-energy or solid waste disposal facility within its jurisdiction, provided the locality has implemented a recycling program that is capable of handling all rechargeable batteries generated within its jurisdiction. However, no such ordinance shall contain any provision that penalizes anyone other than the last user of such rechargeable batteries.

2009, c. 365.

Article 4 - HAZARDOUS WASTE MANAGEMENT

§ 10.1-1426. Permits required; waiver of requirements; reports; conditional permits.

A. No person shall store, provide treatment for, or dispose of a hazardous waste without a permit from the Director.

B. Any person generating, transporting, storing, providing treatment for, or disposing of a hazardous waste shall report to the Director, by such date as the Board specifies by regulation, the following: (i) his name and address, (ii) the name and nature of the hazardous waste, and (iii) the fact that he is generating, transporting, storing, providing treatment for or disposing of a hazardous waste. A person who is an exempt small quantity generator of hazardous wastes, as defined by the administrator of the Environmental Protection Agency, shall be exempt from the requirements of this subsection.

C. Any permit shall contain the conditions or requirements required by the Board's regulations and the federal acts.

D. Upon the issuance of an emergency permit for the storage of hazardous waste, the Director shall notify the chief administrative officer of the local government for the jurisdiction in which the permit has been issued.

E. The Director may deny an application under this article on any grounds for which a permit may be amended, suspended or revoked listed under subsection A of § 10.1-1427.

F. Any locality or state agency may collect hazardous waste from exempt small quantity generators for shipment to a permitted treatment or disposal facility if done in accordance with (i) a permit to store, treat, or dispose of hazardous waste issued pursuant to this chapter or (ii) a permit to transport hazardous waste, and the wastes collected are stored for no more than 10 days prior to shipment to a permitted treatment or disposal facility. If household hazardous waste is collected and managed with hazardous wastes collected from exempt small quantity generators, all waste shall be managed in accordance with the provisions of this subsection.

1986, cc. 492, 563, § 10-279; 1988, c. 891; 1992, c. 463; 2004, c. 442; 2014, c. 139.

§ 10.1-1427. Revocation, suspension or amendment of permits.

A. Any permit issued by the Director pursuant to this article may be revoked, amended or suspended on any of the following grounds or on such other grounds as may be provided by the regulations of the Board:

1. The permit holder has violated any regulation or order of the Board, any condition of a permit, any provision of this chapter, or any order of a court, where such violation (i) results in a release of harmful substances into the environment, (ii) poses a threat of release of harmful substances into the environment, (iii) presents a hazard to human health, or (iv) is representative of a pattern of serious or repeated violations which, in the opinion of the Director, demonstrates the permittee's disregard for or inability to comply with applicable laws, regulations or requirements;

2. The person to whom the permit was issued abandons, sells, leases or ceases to operate the facility permitted;

3. The facilities used in the transportation, storage, treatment or disposal of hazardous waste are operated, located, constructed or maintained in such a manner as to pose a substantial present or potential hazard to human health or the environment, including pollution of air, land, surface water or ground water;

4. Such protective construction or equipment as is found to be reasonable, technologically feasible and necessary to prevent substantial present or potential hazard to human health and welfare or the environment has not been installed at a facility used for the storage, treatment or disposal of a hazardous waste; or

5. Any key personnel have been convicted of any of the following crimes punishable as felonies under the laws of the Commonwealth or the equivalent thereof under the laws of any other jurisdiction: murder; kidnapping; gambling; robbery; bribery; extortion; criminal usury; arson; burglary; theft and related crimes; forgery and fraudulent practices; fraud in the offering, sale, or purchase of securities; alteration of motor vehicle identification numbers; unlawful manufacture, purchase, use or transfer of firearms; unlawful possession or use of destructive devices or explosives; violation of the Drug Control

Act (§ 54.1-3400 et seq.); racketeering; violation of antitrust laws; or has been adjudged by an administrative agency or a court of competent jurisdiction to have violated the environmental protection laws of the United States, the Commonwealth, or any other state and the Director determines that such conviction or adjudication is sufficiently probative of the applicant's inability or unwillingness to operate the facility in a lawful manner, as to warrant denial, revocation, amendment or suspension of the permit.

In making such determination, the Director shall consider:

a. The nature and details of the acts attributed to key personnel;

b. The degree of culpability of the applicant, if any;

c. The applicant's policy or history of discipline of key personnel for such activities;

d. Whether the applicant has substantially complied with all rules, regulations, permits, orders and statutes applicable to the applicant's activities in Virginia;

e. Whether the applicant has implemented formal management control to minimize and prevent the occurrence of such violations; and

f. Mitigation based upon demonstration of good behavior by the applicant including, without limitation, prompt payment of damages, cooperation with investigations, termination of employment or other relationship with key personnel or other persons responsible for the violations or other demonstrations of good behavior by the applicant that the Director finds relevant to his decision.

B. The Director may amend or attach conditions to a permit when:

1. There is a significant change in the manner and scope of operation which may require new or additional permit conditions or safeguards to protect the public health and environment;

2. There is found to be a possibility of pollution causing significant adverse effects on the air, land, surface water or ground water;

3. Investigation has shown the need for additional equipment, construction, procedures and testing to ensure the protection of the public health and the environment from significant adverse effects; or

4. The amendment is necessary to meet changes in applicable regulatory requirements.

C. If the Director finds that hazardous wastes are no longer being stored, treated or disposed of at a facility in accordance with Board regulations, the Director may revoke the permit issued for such facility or, as a condition to granting or continuing in effect a permit, may require the person to whom the permit was issued to provide perpetual care and surveillance of the facility.

1986, c. 492, § 10-280; 1988, c. 891; 1992, c. 463.

§ 10.1-1428. Financial responsibility for abandoned facilities; penalties.

A. The Board shall promulgate regulations which ensure that, if a facility in which hazardous waste is stored, treated, or disposed is closed or abandoned, the costs associated with protecting the public

health and safety from the consequences of such abandonment may be recovered from the person abandoning the facility.

B. Such regulations may include bonding requirements, the creation of a trust fund to be maintained within the Department, self-insurance, other forms of commercial insurance, or other mechanisms that the Department deems appropriate. Regulations governing the amount thereof shall take into consideration the potential for contamination and injury by the hazardous waste, the cost of disposal of the hazardous waste and the cost of restoring the facility to a safe condition.

C. No state agency shall be required to comply with such regulations.

D. Forfeiture of any financial obligation imposed pursuant to this section shall not relieve any holder of a permit issued pursuant to this article of any other legal obligations for the consequences of abandonment of any facility.

E. Any funds forfeited pursuant to this section and the regulations of the Board shall be paid over to the Director, who shall then expend the forfeited funds as necessary to restore and maintain the facility in a safe condition. Nothing in this section shall require the Director to expend funds from any other source to carry out the activities contemplated under this section.

F. Any person who knowingly and willfully abandons a hazardous waste management facility without proper closure or without providing adequate financial assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be liable to the Commonwealth and any political subdivision for the costs incurred in abating, controlling, preventing, removing, or containing such harm or threat.

Any person who knowingly and willfully abandons a hazardous waste management facility without proper closure or without providing adequate financial assurance instruments for such closure shall, if such failure to close results in a significant harm or an imminent and substantial threat of significant harm to human health or the environment, be guilty of a Class 4 felony.

1986, c. 492, § 10-281; 1988, c. 891; 1991, c. 702; 2005, c. 180.

§ 10.1-1429. Notice of release of hazardous substance.

Any person responsible for the release of a hazardous substance from a fixed facility which poses an immediate or imminent threat to public health and who is required by law to notify the National Response Center shall notify the chief administrative officer or his designee of the local government of the jurisdiction in which the release occurs and shall also notify the Department.

1986, c. 492, § 10-282; 1988, c. 891.

Article 4.1 - VOLUNTARY REMEDIATION

§§ 10.1-1429.1 through 10.1-1429.3. Repealed.

Repealed by Acts 2002, c. 378, cl. 2, effective July 1, 2002.

Article 4.2 - REMEDIATED PROPERTY FRESH START PROGRAM

§ 10.1-1429.4. Repealed.

Repealed by Acts 2002, c. 378, cl. 2, effective July 1, 2002.

Article 5 - RADIOACTIVE WASTE

§ 10.1-1430. Authority of Governor to enter into agreements with federal government; effect on federal licenses.

The Governor is authorized to enter into agreements with the federal government providing for discontinuance of the federal government's responsibilities with respect to low-level radioactive waste and the assumption thereof by the Commonwealth.

1986, c. 492, § 10-283; 1988, c. 891.

§ 10.1-1431. Authority of Board to enter into agreements with federal government, other states or interstate agencies; training programs for personnel.

A. The Board, with the prior approval of the Governor, is authorized to enter into agreements with the federal government, other states or interstate agencies, whereby the Commonwealth will perform, on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of low-level radioactive waste.

B. The Board may institute programs to train personnel to carry out the provisions of this article and, with the prior approval of the Governor, may make such personnel available for participation in any program of the federal government, other states or interstate agencies in furtherance of this chapter.

1986, c. 492, § 10-284; 1988, c. 891.

§ 10.1-1432. Further powers of Board.

The Board shall have the power, subject to the approval of the Governor:

1. To acquire by purchase, exercise the right of eminent domain as provided in Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 grant, gift, devise or otherwise, the fee simple title to or any acceptable lesser interest in any lands, selected in the discretion of the Board as constituting necessary, desirable or acceptable sites for low-level radioactive waste management, including lands adjacent to a project site as in the discretion of the Board may be necessary or suitable for restricted areas. In all instances lands that are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose;

2. To convey or lease, for such term as in the discretion of the Board may be in the public interest, any lands so acquired, either for a fair and reasonable consideration or solely or partly as an inducement to the establishment or location in the Commonwealth of any scientific or technological facility, project, satellite project or nuclear storage area; but subject to such restraints as may be deemed proper to bring about a reversion of title or termination of any lease if the grantee or lessee ceases to use the premises or facilities in the conduct of business or activities consistent with the purposes of this article.

However, radioactive waste material sites may be leased but may not otherwise be disposed of except to another department, agency or institution of the Commonwealth or to the United States;

3. To assume responsibility for perpetual custody and maintenance of radioactive waste held for custodial purposes at any publicly or privately operated facility located within the Commonwealth if the parties operating such facilities abandon their responsibility and whenever the federal government or any of its agencies has not assumed the responsibility. In such event, the Board may collect fees from private or public parties holding radioactive waste for perpetual custodial purposes in order to finance such perpetual custody and maintenance as the Board may undertake. The fees shall be sufficient in each individual case to defray the estimated cost of the Board's custodial management activities for that individual case. All such fees, when received by the Board, shall be credited to a special fund of the Department, shall be used exclusively for maintenance costs or for otherwise satisfying custodial and maintenance obligations; and

4. To enter into an agreement with the federal government or any of its authorized agencies to assume perpetual maintenance of lands donated, leased, or purchased from the federal government or any of its authorized agencies and used as custodial sites for radioactive waste.

1986, c. 492, § 10-285; 1988, c. 891; 2003, c. 940.

Article 6 - SITING OF HAZARDOUS WASTE FACILITIES

§ 10.1-1433. Definitions.

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

"Applicant" means the person applying for a certification of site suitability or submitting a notice of intent to apply therefor.

"Application" means an application to the Board for a certification of site suitability.

"Certification of site suitability" or "certification" means the certification issued by the Board pursuant to this chapter.

"Criteria" means the criteria adopted by the Board, pursuant to § 10.1-1436.

"Fund" means the Technical Assistance Fund created pursuant to § 10.1-1448.

"Hazardous waste facility" or "facility" means any facility, including land and structures, appurtenances, improvements and equipment for the treatment, storage or disposal of hazardous wastes, which accepts hazardous waste for storage, treatment or disposal. For the purposes of this article, it does not include: (i) facilities which are owned and operated by and exclusively for the on-site treatment, storage or disposal of wastes generated by the owner or operator; (ii) facilities for the treatment, storage or disposal of hazardous wastes used principally as fuels in an on-site production process; (iii) facilities used exclusively for the pretreatment of wastes discharged directly to a publicly owned sewage treatment works.

"Hazardous waste management facility permit" means the permit for a hazardous waste management facility issued by the Director or the U.S. Environmental Protection Agency.

"Host community" means any county, city or town within whose jurisdictional boundaries construction of a hazardous waste facility is proposed.

"On-site" means facilities that are located on the same or geographically contiguous property which may be divided by public or private right-of-way, and the entrance and exit between the contiguous properties is at a cross-roads intersection so that the access is by crossing, as opposed to going along, the right-of-way. On-site also means noncontiguous properties owned by the same person but connected by a right-of-way which the owner controls and to which the public does not have access.

"Operator" means a person who is responsible for the overall operation of a facility.

"Owner" means a person who owns a facility or a part of a facility.

"Storage" means the containment or holding of hazardous wastes pending treatment, recycling, reuse, recovery or disposal.

"Treatment" means any method, technique or process, including incineration or neutralization, designed to change the physical, chemical or biological character or composition of any hazardous waste to neutralize it or to render it less hazardous or nonhazardous, safer for transport, amenable to recovery or storage or reduced in volume.

1986, c. 492, § 10-288; 1988, c. 891.

§ 10.1-1434. Additional powers and duties of the Board.

A. In addition to its other powers and duties, with regard to hazardous waste the Board shall have the power and duty to:

1. Require that hazardous waste is treated, stored and disposed of properly;

2. Provide information to the public regarding the proper methods of hazardous waste disposal;

3. Establish procedures, where feasible, to eliminate or reduce the disproportionate burden which may be placed on a community in which is located a hazardous waste treatment, storage or disposal facility, by any means appropriate, including mitigation or compensation;

4. Require that the Department compiles, maintains, and makes available to the public, information on the use and availability of conflict resolution techniques so that controversies and conflicts over the local impacts of hazardous waste facility siting decisions may be resolved by negotiation, mediation or similar techniques;

5. Encourage, whenever possible, alternatives to land burial of hazardous wastes, which will reduce, separate, neutralize, recycle, exchange or destroy hazardous wastes; and

6. Regulate hazardous waste treatment, storage and disposal facilities and require that the costs of long-term post-closure care and maintenance of these facilities is born by their owners and operators.

B. In addition to its other powers and duties, with regard to certification of hazardous waste facility sites the Board shall have the power and duty to:

1. Subject to the approval of the Governor, request the use of the resources and services of any state department or agency for technical assistance in the performance of the Board's duties;

2. Hold public meetings or hearings on any matter related to the siting of hazardous waste facilities;

3. Coordinate the preparation of and to adopt criteria for the siting of hazardous waste facilities;

4. Grant or deny certification of site approval for construction of hazardous waste facilities;

5. Promulgate regulations and procedures for approval of hazardous waste facility sites;

6. Adopt a schedule of fees to charge applicants and to collect fees for the cost of processing applications and site certifications; and

7. Perform any acts authorized by this chapter under, through or by means of its own officers, agents and employees, or by contract with any person.

1986, c. 492, §§ 10-287, 10-290; 1988, c. 891.

§ 10.1-1435. Certification of site approval required; "construction" defined; remedies.

A. No person shall construct or commence construction of a hazardous waste facility without first obtaining a certification of site approval by the Board in the manner prescribed herein. For the purpose of this section, "construct" and "construction" mean (i) with respect to new facilities, the significant alteration of a site to install permanent equipment or structures or the installation of permanent equipment or structures; (ii) with respect to existing facilities, the alteration or expansion of existing structures or facilities to initially accommodate hazardous waste, any expansion of more than fifty percent of the area or capacity of an existing hazardous waste facility, or any change in design or process of a hazardous waste facility that will, in the opinion of the Board, result in a substantially different type of facility. Construction does not include preliminary engineering or site surveys, environmental studies, site acquisition, acquisition of an option to purchase or activities normally incident thereto.

B. Upon receiving a written request from the owner or operator of the facility, the Board may allow, without going through the procedures of this article, any changes in the facilities which are designed to:

1. Prevent a threat to human health or the environment because of an emergency situation;

2. Comply with federal or state laws and regulations; or

3. Demonstrably result in safer or environmentally more acceptable processes.

C. Any person violating this section may be enjoined by the circuit court of the jurisdiction wherein the facility is located or the proposed facility is to be located. Such an action may be instituted by the Board, the Attorney General, or the political subdivision in which the violation occurs. In any such action, it shall not be necessary for the plaintiff to plead or prove irreparable harm or lack of an

adequate remedy at law. No person shall be required to post any injunction bond or other security under this section. No action may be brought under this section after a certification of site approval has been issued by the Board, notwithstanding the pendency of any appeals or other challenges to the Board's action. In any action under this section, the court may award reasonable costs of litigation, including attorney and expert witness fees, to any party if the party substantially prevails on the merits of the case and if in the determination of the court the party against whom the costs are awarded has acted unreasonably.

1986, c. 492, § 10-291; 1988, c. 891.

§ 10.1-1436. Site approval criteria.

A. The Board shall promulgate criteria for approval of hazardous waste facility sites. The criteria shall be designed to prevent or minimize the location, construction, or operation of a hazardous waste facility from resulting in (i) any significant adverse impact on the environment and natural resources, and (ii) any significant adverse risks to public health, safety or welfare. The criteria shall also be designed to eliminate or reduce to the extent practicable any significant adverse impacts on the quality of life in the host community and the ability of its inhabitants to maintain quiet enjoyment of their property. The criteria shall ensure that previously approved local comprehensive plans are considered in the certification of hazardous waste facility sites.

B. To avoid, to the maximum extent feasible, duplication with existing agencies and their areas of responsibility, the criteria shall reference, and the Board shall list in the draft and final certifications required hereunder, the agency approvals required and areas of responsibility concerning a site and its operation. The Board shall not review or make findings concerning the adequacy of those agency approvals and areas of responsibility.

C. The Board shall make reasonable efforts to reduce or eliminate duplication between the criteria and other applicable regulations and requirements.

D. The criteria may be amended or modified by the Board at any time.

1986, c. 492, § 10-292; 1988, c. 891.

§ 10.1-1437. Notice of intent to file application for certification of site approval.

A. Any person may submit to the Board a notice of intent to file an application for a certification of site approval. The notice shall be in such form as the Board may prescribe by regulation. Knowingly falsifying information, or knowingly withholding any material information, shall void the notice and shall constitute a felony punishable by confinement in the penitentiary for one year or, in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than twelve months, a fine of not more than $10,000, or both.

Any state agency filing a notice of intent shall include therein a statement explaining why the Commonwealth desires to build a hazardous waste facility and how the public interest would be served thereby.

B. Within forty-five days of receipt of such a notice, the Board shall determine whether it is complete. The Board shall reject any incomplete notice, advise the applicant of the information required to complete it, and allow reasonable time to correct any deficiencies.

C. Upon receipt of the notice, the Board, at the applicant's expense, shall:

1. Deliver or cause to be delivered a copy of the notice of intent together with a copy of this article to the governing body of each host community and to each person owning property immediately adjoining the site of the proposed facility; and

2. Have an informative description of the notice published in a newspaper of general circulation in each host community once each week for four successive weeks. The description shall include the name and address of the applicant, a description of the proposed facility and its location, the places and times where the notice of intent may be examined, the address and telephone number of the Board or other state agency from which information may be obtained, and the date, time and location of the initial public briefing meeting on the notice.

1986, c. 492, § 10-293; 1988, c. 891.

§ 10.1-1438. Powers of governing body of host community; technical assistance.

A. The governing body of a host community shall have the power to:

1. Hire and pay consultants and other experts on behalf of the host community in matters pertaining to the siting of the facility;

2. Receive and disburse moneys from the fund, and any other moneys as may be available; and

3. Enter into a contract, which may be assignable at the parties' option, binding upon the governing body of the host community and enforceable against it and future governing bodies of the host community in any court of competent jurisdiction, with an applicant by signing a siting agreement pursuant to § 10.1-1442.

B. The Board shall make available to the governing body from the fund a reasonable sum of money to be determined by the Board. This shall be used by the governing body to hire consultants to provide it with technical assistance and information necessary to aid the governing body in its review of the siting proposal, negotiations with the applicant and the development of a siting agreement.

Unused moneys from the fund shall be returned to the Board. The governing body shall provide the Board with a certified accounting statement of any moneys expended from the fund.

C. The governing body of the host community may appoint a local advisory committee to facilitate communication and the exchange of information among the local government, the community, the applicant and the Board.

D. Notwithstanding the foregoing provisions of this article, the governing body of a host community may notify the Board, within fifteen days after the briefing meeting pursuant to § 10.1-1439, that it has elected to waive further participation under the provisions of this article. After receiving notification

from the host community, the Board may issue certification of site approval without further participation by the host community under the provisions of this section and § 10.1-1442. Nothing shall prevent a host community from submitting comments on the application or participating in any public hearing or meeting held pursuant to this chapter, nor shall the host community be precluded from enforcing its regulations and ordinances as provided by subsection G of § 10.1-1446.

1986, c. 492, § 10-294; 1988, c. 891.

§ 10.1-1439. Briefing meetings.

A. Not more than seventy-five nor less than sixty days after the delivery of the notice of intent to the host community, the Board shall conduct a briefing meeting in or in reasonable proximity to the host community. A quorum of the Board shall be present. Notice of the date, time, place and purpose of the briefing session shall be prepared by the Board and shall accompany the notice of intent delivered pursuant to subdivision C 1 of § 10.1-1437 and shall be included in the notice published pursuant to subdivision C 2 of § 10.1-1437.

At least one representative of the applicant shall be present at the briefing meeting.

The Board shall adopt procedures for the conduct of briefing meetings. The briefing meeting shall provide information on the proposed site and facility and comments, suggestions and questions thereon shall be received.

B. The Board may conduct additional briefing meetings at any time in or near a host community, provided that at least fifteen days in advance of a meeting, notice of the date, time, place and purpose of the meeting is delivered in writing to the applicant, each member of the governing body and to all owners of property adjoining the proposed site.

C. A stenographic or electronic record shall be made of all briefing meetings. The record shall be available for inspection during normal business hours.

1986, c. 492, § 10-295; 1988, c. 891.

§ 10.1-1440. Impact analysis.

A. The applicant shall submit to the Board a draft impact analysis for the proposed facility within ninety days after the initial briefing meeting. At the applicant's expense, copies of the draft impact analysis shall be furnished as follows: five to the host community, and one to each person owning property adjoining the site of the proposed facility. At least one copy shall be made available at a convenient location in the host community for public inspection and copying during normal business hours.

B. The draft impact analysis shall include a detailed assessment of the project's suitability with respect to the criteria and other information the Board may require by regulation.

C. The Board, at the applicant's expense, shall cause notice of the filing of the draft impact analysis to be made in the manner provided in § 10.1-1447 within ten days of receipt. The notice shall include (i) a general description of the analysis, (ii) a list of recipients, (iii) a description of the places and times that the analysis will be available for inspection, (iv) a description of the Board's procedures for

receiving comments on the analysis, and (v) the addresses and telephone numbers for obtaining information from the Board.

D. The Board shall allow forty-five days after publication of notice for comment on the draft impact analysis. No sooner than thirty and no more than forty days after publication of notice of the draft impact analysis, the Board shall conduct a public meeting on the draft impact analysis in or near the host community. The meeting shall be for the purpose of explaining, answering questions and receiving comments on the draft impact analysis. A representative of the governing body and a representative of the applicant shall be present at the meeting.

E. Within ten days after the close of the comment period, the Board shall forward to the applicant a copy of all comments received on the draft impact analysis, together with its own comments.

F. The applicant shall prepare and submit a final impact analysis to the Board after receiving the comments. The final impact analysis shall reflect the comments as they pertain to each of the items listed in subsection B of this section. Upon request, a copy of the final impact analysis shall be provided by the applicant to each of the persons who received the draft impact analysis.

G. This section shall not apply when the host community has elected to waive participation under subsection D of § 10.1-1438.

1986, c. 492, § 10-296; 1988, c. 891.

§ 10.1-1441. Application for certification of site approval.

A. At any time within six months after submission of the final impact analysis, the applicant may submit to the Board an application for certification of site approval. The application shall contain:

1. Conceptual engineering designs for the proposed facility;

2. A detailed description of the facility's suitability to meet the criteria promulgated by the Board, including any design and operation measures that will be necessary or otherwise undertaken to meet the criteria; and

3. A siting agreement, if one has been executed pursuant to subsection C of § 10.1-1442, or, if none has been executed, a statement to that effect.

B. The application shall be accompanied by whatever fee the Board, by regulation, prescribes pursuant to § 10.1-1434.

C. The Board shall review the application for completeness and notify the applicant within fifteen days of receipt that the application is incomplete or complete.

If the application is incomplete, the Board shall advise the applicant of the information necessary to make the application complete. The Board shall take no further action until the application is complete.

If the application is complete, the Board shall direct the applicant to furnish copies of the application to the following: five to the host community, one to the Director, and one to each person owning property

adjoining the proposed site. At least one copy of the application shall be made available by the applicant for inspection and copying at a convenient place in a host community during normal business hours.

D. The Board shall cause notice of the application to be made in the manner provided in § 10.1-1447 and shall notify each governing body that upon publication of the notice the governing body shall conclude all negotiations with the applicant within thirty days of publication of the notice. The applicant and the governing body may, by agreement, extend the time for negotiation to a fixed date and shall forthwith notify the Board of this date. The Board may also extend the time to a fixed date for good cause shown.

If the host community has waived participation under the provisions of subsection D of § 10.1-1438, the Board shall, at the time that notice of the application is made, request that the governing body submit, within thirty days of receiving notice, a report meeting the requirements of subdivision 2 of subsection E of this section.

E. At the end of the period specified in subsection D of this section, a governing body shall submit to the Board and to the applicant a report containing:

1. A complete siting agreement, if any, or in case of failure to reach full agreement, a description of points of agreement and unresolved points; and

2. Any conditions or restrictions on the construction, operation or design of the facility that are required by local ordinance.

F. If the report is not submitted within the time required, the Board may proceed as specified in subsection A of § 10.1-1443.

G. The applicant may submit comments on the report of the governing body at any time prior to the issuance of the draft certification of site approval.

H. Notwithstanding any other provision of this chapter, if the host community has notified the Board, pursuant to subsection D of § 10.1-1438, that it has elected to waive further participation hereunder, the Board shall so notify the applicant within fifteen days of receipt of notice from the host community, and shall advise the applicant of the time for submitting its application for certification of site approval. The applicant shall submit its application within the time prescribed by the Board, which time shall not be less than ninety days unless the applicant agrees to a shorter time.

1986, c. 492, § 10-297; 1988, c. 891.

§ 10.1-1442. Negotiations; siting agreement.

A. The governing body or its designated representatives and the applicant, after submission of notice of intent to file an application for certification of site approval, may meet to discuss any matters pertaining to the site and the facility, including negotiations of a siting agreement. The time and place of any meeting shall be set by agreement, but at least forty-eight hours' notice shall be given to members of the governing body and the applicant.

B. The siting agreement may include any terms and conditions, including mitigation of adverse impacts and financial compensation to the host community, concerning the facility.

C. The siting agreement shall be executed by the signatures of (i) the chief executive officer of the host community, who has been so directed by a majority vote of the local governing body, and (ii) the applicant or authorized agent.

D. The Board shall assist in facilitating negotiations between the local governing body and the applicant.

E. No injunction, stay, prohibition, mandamus or other order or writ shall lie against the conduct of negotiations or discussions concerning a siting agreement or against the agreement itself, except as they may be conducted in violation of the provisions of this chapter or any other state or federal law.

1986, c. 492, § 10-298; 1988, c. 891.

§ 10.1-1443. Draft certification of site approval.

A. Within thirty days after receipt of the governing body's report or as otherwise provided in subsection F of § 10.1-1441, the Board shall issue or deny a draft certification of site approval.

When application is made pursuant to subsection H of § 10.1-1441, the Board shall issue or deny draft certification of site approval within ninety days after receipt of the completed application.

B. The Board may deny the application for certification of site approval if it finds that the applicant has failed or refused to negotiate in good faith with the governing body for the purpose of attempting to develop a siting agreement.

C. The draft certification of site approval shall specify the terms, conditions and requirements that the Board deems necessary to protect health, safety, welfare, the environment and natural resources.

D. Copies of the draft certification of site approval, together with notice of the date, time and place of public hearing required under § 10.1-1444, shall be delivered by the Board to the governing body of each host community, and to persons owning property adjoining the site for the proposed facility. At least one copy of the draft certification shall be available at a convenient location in the host community for inspection and copying during normal business hours.

1986, c. 492, § 10-299; 1988, c. 891.

§ 10.1-1444. Public hearing on draft certification of site approval.

A. The Board shall conduct a public hearing on the draft certification not less than fifteen nor more than thirty days after the first publication of notice. A quorum of the Board shall be present. The hearing shall be conducted in the host community.

B. Notice of the hearing shall be made at the applicant's expense and in the manner provided in § 10.1-1447. It shall include:

1. A brief description of the terms and conditions of the draft certification;

2. Information describing the date, time, place and purpose of the hearing;

3. The name, address and telephone number of an official designated by the Board from whom interested persons may obtain access to documents and information concerning the proposed facility and the draft application;

4. A brief description of the rules and procedures to be followed at the hearing and the time for receiving comments; and

5. The name, address and telephone number of an official designated by the Board to receive written comments on the draft certification.

C. The Board shall designate a person to act as hearing officer for the receipt of comments and testimony at the public hearing. The hearing officer shall conduct the hearing in an expeditious and orderly fashion, according to such rules and procedures as the Board shall prescribe.

D. A transcript of the hearing shall be made and shall be incorporated into the hearing record.

E. Within fifteen days after the close of the hearing, the hearing officer shall deliver a copy of the hearing record to each member of the Board. The hearing officer may prepare a summary to accompany the record, and this summary shall become part of the record.

1986, c. 492, § 10-300; 1988, c. 891.

§ 10.1-1445. Final decision on certification of site approval.

A. Within forty-five days after the close of the public hearing, the Board shall meet within or near the host community and shall vote to issue or deny the certification of site approval. The Board may include in the certification any terms and conditions which it deems necessary and appropriate to protect and prevent injury or adverse risk to health, safety, welfare, the environment and natural resources. At least seven days' notice of the date, time, place and purpose of the meeting shall be made in the manner provided in § 10.1-1447. No testimony or evidence will be received at the meeting.

B. The Board shall grant the certification of site approval if it finds:

1. That the terms and conditions thereof will protect and prevent injury or unacceptable adverse risk to health, safety, welfare, the environment and natural resources;

2. That the facility will comply and be consistent with the criteria promulgated by the Board; and

3. That the applicant has made reasonable and appropriate efforts to reach a siting agreement with the host community including, though not limited to, efforts to mitigate or compensate the host community and its residents for any adverse economic effects of the facility. This requirement shall not apply when the host community has waived participation pursuant to subsection D of § 10.1-1438.

C. The Board's decision to grant or deny certification shall be based on the hearing record and shall be accompanied by the written findings of fact and conclusions upon which the decision was based. The Board shall provide the applicant and the governing body of the host community with copies of the decision, together with the findings and conclusions, by certified mail.

D. The grant or denial of certification shall constitute final action by the Board.

1986, c. 492, § 10-301; 1988, c. 891.

§ 10.1-1446. Effect of certification.

A. Grant of certification of site approval shall supersede any local ordinance or regulation that is inconsistent with the terms of the certification. Nothing in this chapter shall affect the authority of the host community to enforce its regulations and ordinances to the extent that they are not inconsistent with the terms and conditions of the certification of site approval. Grant of certification shall not preclude or excuse the applicant from the requirement to obtain approval or permits under this chapter or other state or federal laws. The certification shall continue in effect until it is amended, revoked or suspended.

B. The certification may be amended for cause under procedures and regulations prescribed by the Board.

C. The certification shall be terminated or suspended (i) at the request of the owner of the facility; (ii) upon a finding by the Board that conditions of the certification have been violated in a manner that poses a substantial risk to health, safety or the environment; (iii) upon termination of the hazardous waste facility permit by the Director or the EPA Administrator; or (iv) upon a finding by the Board that the applicant has knowingly falsified or failed to provide material information required in the notice of intent and application.

D. The facility owner shall promptly notify the Board of any changes in the ownership of the facility or of any significant changes in capacity or design of the facility.

E. Nothing in the certification shall constitute a defense to liability in any civil action involving private rights.

F. The Commonwealth may not acquire any site for a facility by eminent domain prior to the time certification of site approval is obtained. However, any agency or representative of the Commonwealth may enter upon a proposed site pursuant to the provisions of § 25.1-203.

G. The governing body of the host community shall have the authority to enforce local regulations and ordinances to the extent provided by subsection A of this section and the terms of the siting agreement. The local governing body may be authorized by the Board to enforce specified provisions of the certification.

1986, c. 492, § 10-302; 1988, c. 891; 2003, c. 940.

§ 10.1-1447. Public participation; notice.

A. Public participation in the development, revision and implementation of regulations and programs under this chapter shall be provided for, encouraged and assisted by the Board.

B. Whenever notice is required to be made under the terms of this chapter, unless the context expressly and exclusively provides otherwise, it shall be disseminated as follows:

1. By publication once each week for two successive weeks in a newspaper of general circulation within the area to be affected by the subject of the notice;

2. By broadcast over one or more radio stations within the area to be affected by the subject of the notice;

3. By mailing to each person who has asked to receive notice; and

4. By such additional means as the Board deems appropriate.

C. Every notice shall provide a description of the subject for which notice is made and shall include the name and telephone number of a person from whom additional information may be obtained.

1986, c. 492, § 10-303; 1988, c. 891.

§ 10.1-1448. Technical Assistance Fund.

A special fund, to be known as the Technical Assistance Fund, is created in the Office of the State Treasurer. The Fund shall consist of appropriations made to the Fund by the General Assembly. The Board shall make moneys from the Fund available to any host community for the purposes set out in subsection C of § 10.1-1438.

1986, c. 492, § 10-304; 1988, c. 891.

§ 10.1-1449. Siting Dedicated Revenue Fund.

There is hereby established in the state treasury a special dedicated revenue fund to be designated as the "Siting Dedicated Revenue Fund," which shall consist of fees and other payments made by applicants to process applications for site certification as provided in § 10.1-1434, and other moneys appropriated thereto, gifts, grants, and the interest accruing thereon.

1986, c. 602, § 10-304.1; 1988, c. 891.

Article 7 - TRANSPORTATION OF HAZARDOUS MATERIALS

§ 10.1-1450. Waste Management Board to promulgate regulations regarding hazardous materials.

The Board shall promulgate regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported. Such regulations shall be no more restrictive than any applicable federal laws or regulations.

1986, c. 492, § 10-305; 1988, c. 891; 1992, c. 208; 1997, c. 260.

§ 10.1-1451. Enforcement of article and regulations.

The Department of State Police and all other law-enforcement officers of the Commonwealth who have satisfactorily completed the course in Hazardous Materials Compliance and Enforcement as prescribed by the U.S. Department of Transportation, Research and Special Programs Administration, Office of Hazardous Materials Transportation, in federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials, shall enforce the provisions of this article, and any rule or regulation promulgated hereunder. Those law-enforcement officers certified to enforce the provisions of this article and any regulation promulgated hereunder, shall annually receive

in-service training in current federal safety regulations and safety inspection procedures pertaining to the transportation of hazardous materials.

1986, c. 492, § 10-306; 1988, cc. 14, 891.

§ 10.1-1452. Article not to preclude exercise of certain regulatory powers.

The provisions of this article shall not preclude the exercise of the statutory and regulatory powers of any agency, department or political subdivision of the Commonwealth having statutory authority to regulate hazardous materials on specified highways or portions thereof.

1986, c. 492, § 10-307; 1988, c. 891.

§ 10.1-1453. Exceptions.

This article shall not apply to regular military or naval forces of the United States, the duly authorized militia of any state or territory thereof, police or fire departments, or sheriff's offices and regional jails of this Commonwealth, provided the same are acting within their official capacity and in the performance of their duties, or to the transportation of hazardous radioactive materials in accordance with § 44-146.30.

1986, c. 492, § 10-308; 1988, c. 891; 1995, c. 112.

§ 10.1-1454. Transportation under United States regulations.

Any person transporting hazardous materials in accordance with regulations promulgated under the laws of the United States, shall be deemed to have complied with the provisions of this article, except when such transportation is excluded from regulation under the laws or regulations of the United States.

1986, c. 492, § 10-309; 1988, c. 891.

Article 7.1 - TRANSPORTATION OF SOLID AND MEDICAL WASTES ON STATE WATERS

§ 10.1-1454.1. Regulation of wastes transported by water.

A. The Board shall develop regulations governing the commercial transport, loading and off-loading of nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste by ship, barge or other vessel upon the navigable waters of the Commonwealth as are necessary to protect the health, safety, and welfare of the citizens of the Commonwealth and to protect the Commonwealth's environment and natural resources from pollution, impairment or destruction. Included in the regulations shall be provisions governing (i) the issuance of permits by rule to facilities receiving nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste from a ship, barge or other vessel transporting such wastes upon the navigable waters of the Commonwealth and (ii) to the extent allowable under federal

law and regulation, the commercial transport of nonhazardous solid wastes (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, and regulated medical waste upon the navigable waters of the Commonwealth and the loading and off-loading of ships, barges and other vessels transporting such waste.

B. 1. Included in the regulations shall be requirements, to the extent allowable under federal law, that: (a) containers holding wastes be watertight and be designed, constructed, secured and maintained so as to prevent the escape of wastes, liquids and odors and to prevent the loss or spillage of wastes in the event of an accident; (b) containers be tested at least two times a year and be accompanied by a certification from the container owner that such testing has shown that the containers are watertight; (c) each container be listed on a manifest designed to assure that the waste being transported in each container is suitable for the destination facility; and (d) containers be secured to the barges to prevent accidents during transportation, loading and unloading.

2. For the purposes of this section and the regulations promulgated hereunder, a container shall satisfy clauses (a) and (b) of subdivision B 1, if it meets the following requirements:

a. Each container shall be certified for special service by a Delegated Approval Authority approved by the U.S. Coast Guard in accordance with 49 CFR Parts 450 through 453 as having met the requirements for the approval of prototype containers described in §§ 1.5 and 1.17.2 of the Rules for Certification of Cargo Containers, 1998, American Bureau of Shipping, including a special container prototype test as follows: a minimum internal head of three inches of water shall be applied to all sides, seams, bottom and top of the container for at least 15 minutes of each side, seam, bottom and top, during which the container shall remain free from the escape of water.

b. Each container shall be certified by the Delegated Approval Authority as having passed the following test when the container is placed in service and at least once every six months thereafter while it remains in service:

(1) Each container shall have a minimum internal head of 24 inches of water applied to the container in an upright position for at least 15 minutes during which the container shall remain free from the escape of water. All wastewater and contaminated water resulting from this test procedure shall be disposed of in compliance with the applicable regulations of the State Water Control Board.

(2) Each container shall be visually inspected for damage on all sides, plus the top and bottom, and shall have no visible holes, gaps, or structural damage affecting its integrity or performance.

c. Following each unloading of solid waste from a container, each container shall be visually inspected, as practical, at the solid waste management facility immediately upon unloading for damage on all sides, plus top and bottom, and shall have no visible holes, gaps, or structural damage affecting its integrity or performance.

3. It shall be a violation of this chapter if during transportation, holding, or storage operations, or in the event of an accident, there is an: (i) entry of liquids into a container; (ii) escape, loss, or spillage of wastes or liquids from a container; or (iii) escape of odors from a container.

C. A facility utilized to receive nonhazardous solid waste (except scrap metal, dredged material, recyclable construction demolition debris being transported directly to a processing facility for recycling or reuse, and source-separated recyclables), municipal and industrial sludge, or regulated medical waste from a ship, barge or other vessel regulated pursuant to subsection A, arriving at the facility upon the navigable waters of the Commonwealth, is a solid waste management facility and is subject to the requirements of this chapter. On and after the effective date of the regulations promulgated under subsection A, no new or existing facilities shall receive any wastes regulated under subsection A from a ship, barge or other vessel without a permit issued in accordance with the Board's regulations.

D. 1. The Board shall, by regulation, establish a fee schedule, payable by the owner or operator of any ship, barge or other vessel carrying, loading or off-loading waste regulated under this article on the navigable waters of the Commonwealth, for the purpose of funding the administrative and enforcement costs of this article associated with such operations including, but not limited to, the inspection and monitoring of such ships, barges or other vessels to ensure compliance with this article, and for funding activities authorized by this section to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes.

2. The owner or operator of a facility permitted to receive wastes regulated under this article from a ship, barge or other vessel shall be assessed a permit fee in accordance with the criteria set forth in § 10.1-1402.1. However, such fees shall also include an additional amount to cover the Department's costs for facility inspections that it shall conduct on at least a quarterly basis.

3. The fees collected pursuant to this article shall be deposited into a separate account within the Virginia Waste Management Board Permit Program Fund (§ 10.1-1402.2) and shall be treated as are other moneys in that fund except that they shall only be used for the purposes of this article, and for funding purposes authorized by this article to abate pollution caused by barging of waste, to improve water quality, or for other waste-related purposes.

E. The Board shall promulgate regulations requiring owners and operators of ships, barges and other vessels transporting wastes regulated under this article to demonstrate financial responsibility sufficient to comply with the requirements of this article as a condition of operation. Regulations governing the amount of any financial responsibility required shall take into consideration: (i) the risk of potential damage or injury to state waters and the impairment of beneficial uses that may result from spillage or leakage from the ship, barge or vessel; (ii) the potential costs of containment and cleanup; and (iii) the nature and degree of injury or interference with general health, welfare and property that may result.

F. The owner or operator of a ship, barge or other vessel from which there is spillage or loss to state waters of wastes subject to regulations under this article shall immediately report such spillage or loss in accordance with the regulations of the Board and shall immediately take all such actions as may be necessary to contain and remove such wastes from state waters.

G. No person shall transport wastes regulated under this article on the navigable waters of the Commonwealth by ship, barge or other vessel unless such ship, barge or vessel and the containers carried thereon are designed, constructed, loaded, operated and maintained so as to prevent the escape of liquids, waste and odors and to prevent the loss or spillage of waste in the event of an accident. A violation of this subsection shall be a Class 1 misdemeanor. For the purposes of this subsection, the term "odors" means any emissions that cause an odor objectionable to individuals of ordinary sensibility.

H. The Director may grant variances for the commercial transport, loading, and off-loading of solid waste on waters of the Commonwealth from the requirements of this section provided: (i) travel on state waters is minimized; (ii) the solid waste is easily identifiable, is not hazardous, and is containerized so as to prevent the escape of liquids, waste, and odors; (iii) the containers are secured to the vessel to prevent spillage; (iv) the amount of solid waste transported does not exceed 300 tons annually; and (v) the activity will not occur when weather conditions pose a risk of the vessel losing its load.

1998, cc. 705, 717; 1999, c. 608; 2003, c. 830; 2005, cc. 130, 232; 2006, c. 477.

§ 10.1-1454.2. Repealed.

Repealed by Acts 2003, c. 830.

Article 7.2 - TRANSPORTATION OF MUNICIPAL SOLID AND MEDICAL WASTE BY TRUCK

§ 10.1-1454.3. Repealed.

Repealed by Acts 2007, c. 23, cl. 2.

Article 8 - PENALTIES, ENFORCEMENT AND JUDICIAL REVIEW

§ 10.1-1455. Penalties and enforcement.

A. Any person who violates any provision of this chapter, any condition of a permit or certification, or any regulation or order of the Board shall, upon such finding by an appropriate circuit court, be assessed a civil penalty of not more than $32,500 for each day of such violation. All civil penalties under this section shall be recovered in a civil action brought by the Attorney General in the name of the Commonwealth. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 (§ 10.1-2500 et seq.) of this title.

B. In addition to the penalties provided above, any person who knowingly transports any hazardous waste to an unpermitted facility; who knowingly transports, treats, stores, or disposes of hazardous

waste without a permit or in violation of a permit; or who knowingly makes any false statement or representation in any application, disclosure statement, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of hazardous waste program compliance shall be guilty of a felony punishable by a term of imprisonment of not less than one year nor more than five years and a fine of not more than $32,500 for each violation, either or both. The provisions of this subsection shall be deemed to constitute a lesser included offense of the violation set forth under subsection I.

Each day of violation of each requirement shall constitute a separate offense.

C. The Board is authorized to issue orders to require any person to comply with the provisions of any law administered by the Board, the Director or the Department, any condition of a permit or certification, or any regulations promulgated by the Board or to comply with any case decision, as defined in § 2.2-4001, of the Board or Director. Any such order shall be issued only after a hearing in accordance with § 2.2-4020 with at least 30 days' notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than 15 days after mailing a copy thereof by certified mail to the last known address of such person. The provisions of this section shall not affect the authority of the Board to issue separate orders and regulations to meet any emergency as provided in § 10.1-1402.

D. Any person willfully violating or refusing, failing or neglecting to comply with any regulation or order of the Board or the Director, any condition of a permit or certification or any provision of this chapter shall be guilty of a Class 1 misdemeanor unless a different penalty is specified.

Any person violating or failing, neglecting, or refusing to obey any lawful regulation or order of the Board or the Director, any condition of a permit or certification or any provision of this chapter may be compelled in a proceeding instituted in an appropriate court by the Board or the Director to obey such regulation, permit, certification, order or provision of this chapter and to comply therewith by injunction, mandamus, or other appropriate remedy.

E. Without limiting the remedies which may be obtained in this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed $32,500 for each violation. Such civil penalties shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title. Each day of violation of each requirement shall constitute a separate offense. Such civil penalties may, in the discretion of the court assessing them, be directed to be paid into the treasury of the county, city or town in which the violation occurred, to be used to abate environmental pollution in such manner as the court may, by order, direct, except that where the owner in violation is the county, city or town itself, or its agent, the court shall direct the penalty to be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

F. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Board or the Director, any condition of a permit or any provision of this chapter, the Board may provide, in an order issued by the Board against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under this section. Such civil charges shall be paid into the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund pursuant to Chapter 25 of this title.

G. In addition to all other available remedies, the Board may issue administrative orders for the violation of (i) any law or regulation administered by the Board; (ii) any condition of a permit or certificate issued pursuant to this chapter; or (iii) any case decision or order of the Board. Issuance of an administrative order shall be a case decision as defined in § 2.2-4001 and shall be issued only after a hearing before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020. Orders issued pursuant to this subsection may include civil penalties of up to $32,500 per violation not to exceed $100,000 per order, and may compel the taking of corrective actions or the cessation of any activity upon which the order is based. The Board may assess penalties under this subsection if (a) the person has been issued at least two written notices of alleged violation by the Department for the same or substantially related violations at the same site, (b) such violations have not been resolved by demonstration that there was no violation, by an order issued by the Board or the Director, or by other means, (c) at least 130 days have passed since the issuance of the first notice of alleged violation, and (d) there is a finding that such violations have occurred after a hearing conducted in accordance with this subsection. The actual amount of any penalty assessed shall be based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty. The Board shall provide the person with the calculation for the proposed penalty prior to any hearing conducted for the issuance of an order that assesses penalties pursuant to this subsection. Penalties shall be paid to the state treasury and deposited by the State Treasurer into the Virginia Environmental Emergency Response Fund (§ 10.1-2500 et seq.). The issuance of a notice of alleged violation by the Department shall not be considered a case decision as defined in § 2.2-4001. Any notice of alleged violation shall include a description of each violation, the specific provision of law violated, and information on the process for obtaining a final decision or fact finding from the Department on whether or not a violation has occurred, and nothing in this section shall preclude an owner from seeking such a determination. Orders issued pursuant to this subsection shall become effective five days after having been delivered to the affected persons or mailed by certified mail to the last known address of such persons. Should the Board find that any person is adversely affecting the public health, safety or welfare, or the environment, the Board shall, after a reasonable attempt to give notice, issue, without a hearing, an emergency administrative order directing the person to cease the activity immediately and undertake any needed corrective action, and shall within 10 days hold a hearing, after reasonable notice as to the time and place thereof to the person, to affirm, modify, amend or cancel the emergency administrative order. If the Board finds that a person who has been issued an

administrative order or an emergency administrative order is not complying with the order's terms, the Board may utilize the enforcement and penalty provisions of this article to secure compliance.

H. In addition to all other available remedies, the Department and generators of recycling residues shall have standing to seek enforcement by injunction of conditions which are specified by applicants in order to receive the priority treatment of their permit applications pursuant to § 10.1-1408.1.

I. Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste in violation of this chapter or in violation of the regulations promulgated by the Board and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be guilty of a felony punishable by a term of imprisonment of not less than two years nor more than 15 years and a fine of not more than $250,000, either or both. A defendant that is not an individual shall, upon conviction of violating this section, be subject to a fine not exceeding the greater of $1 million or an amount that is three times the economic benefit realized by the defendant as a result of the offense. The maximum penalty shall be doubled with respect to both fine and imprisonment for any subsequent conviction of the same person.

J. Criminal prosecutions under this chapter shall be commenced within three years after discovery of the offense, notwithstanding the provisions of any other statute.

K. The Board shall be entitled to an award of reasonable attorneys' fees and costs in any action brought by the Board under this section in which it substantially prevails on the merits of the case, unless special circumstances would make an award unjust.

L. The Board shall develop and provide an opportunity for public comment on guidelines and procedures that contain specific criteria for calculating the appropriate penalty for each violation based upon the severity of the violations, the extent of any potential or actual environmental harm, the compliance history of the facility or person, any economic benefit realized from the noncompliance, and the ability of the person to pay the penalty.

1986, c. 492, § 10-310; 1988, c. 891; 1990, cc. 12, 781, 912, 919; 1991, c. 718; 1993, c. 23; 1998, c. 837; 1999, c. 876; 2005, cc. 133, 706.

§ 10.1-1456. Right of entry to inspect, etc.; warrants.

Upon presentation of appropriate credentials and upon consent of the owner or custodian, the Director or his designee shall have the right to enter at any reasonable time onto any property to inspect, investigate, evaluate, conduct tests or take samples for testing as he reasonably deems necessary in order to determine whether the provisions of any law administered by the Board, Director or Department, any regulations of the Board, any order of the Board or Director or any conditions in a permit, license or certificate issued by the Board or Director are being complied with. If the Director or his designee is denied entry, he may apply to an appropriate circuit court for an inspection warrant authorizing such investigation, evaluation, inspection, testing or taking of samples for testing as provided in Chapter 24 (§ 19.2-393 et seq.) of Title 19.2.

1986, c. 492, § 10-311; 1988, c. 891.

§ 10.1-1457. Judicial review.

A. Except as provided in subsection B, any person aggrieved by a final decision of the Board or Director under this chapter shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

B. Any person who has participated, in person or by the submittal of written comments, in the public comment process related to a final decision of the Board or Director under § 10.1-1408.1 or § 10.1-1426 and who has exhausted all available administrative remedies for review of the Board's or Director's decision, shall be entitled to judicial review thereof in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) if such person meets the standard for obtaining judicial review of a case or controversy pursuant to Article III of the United States Constitution. A person shall be deemed to meet such standard if (i) such person has suffered an actual or imminent injury which is an invasion of a legally protected interest and which is concrete and particularized; (ii) such injury is fairly traceable to the decision of the Board and not the result of the independent action of some third party not before the court; and (iii) such injury will likely be redressed by a favorable decision by the court.

1986, c. 492, § 10-312; 1988, c. 891; 1996, c. 1032.

§ 10.1-1458. Persons to provide plans, specifications, and information.

Every person the Department has reason to believe is generating, storing, transporting, disposing of, or treating waste shall, on request of the Department, furnish such plans, specifications, and information as the Department may require in the discharge of its duties under this chapter. Trade secret information included within any plans, specifications, or information submitted pursuant to this section shall be excluded from the provisions of the Virginia Freedom of Information Act as provided in subdivision 26 of § 2.2-3705.6. At all times, the Department may disclose such trade secret information to the appropriate officials of the Environmental Protection Agency pursuant to the requirements of the federal Solid Waste Disposal Act, 42 U.S.C. § 6901 et seq., or as otherwise required by law.

2013, c. 54.

Chapter 15 - SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

§ 10.1-1500. Compact entered into and enacted into law.

The Commonwealth of Virginia hereby enters into and enacts into law the Southeast Interstate Low-Level Radioactive Waste Management Compact to become a party to the compact with the parties and upon the conditions named therein, which compact shall be in the form which follows and which as initially enacted in this section is as agreed to September 10, 1982.

ARTICLE I. POLICY AND PURPOSE

There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Compact. The party states recognize and declare that each state is responsible for providing for the availability of capacity either within or outside the state for disposal of low-level radioactive waste

generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. They also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis. The party states further recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (P.L. 96-573), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposal of such wastes. The party states recognize that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

It is the policy of the party states to: enter into a regional low-level radioactive waste management compact for the purpose of providing the instrument and framework for a cooperative effort, provide sufficient facilities for the proper management of low-level radioactive waste generated in the region, promote the health and safety of the region, limit the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region, encourage the reduction of the amounts of low-level waste generated in the region, distribute the costs, benefits and obligations of successful low-level radioactive waste management equitably among the party states, and ensure the ecological management of low-level radioactive wastes.

Implicit in the Congressional consent to this compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this compact by:

1. Expeditious enforcement of federal rules, regulations and laws; and

2. Imposing sanctions against those found to be in violation of federal rules, regulations and laws; and

3. Timely inspections of their licensees to determine their capability to adhere to such rules, regulations and laws; and

4. Timely provision of technical assistance to this compact in carrying out their obligations under the Low-Level Radioactive Waste Policy Act as amended.

ARTICLE II. DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

a. "Commission" or "Compact Commission" means the Southeast Interstate Low-Level Radioactive Waste Management Commission.

b. "Facility" means a parcel of land, together with the structures, equipment and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage or disposal of low-level radioactive waste.

c. "Generator" means any person who produces or possesses low-level radioactive waste in the course of or as an incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity. This does not include persons who

provide a service to generators by arranging for the collection, transportation, storage or disposal of wastes with respect to such waste generated outside the region.

d. "High-level waste" means irradiated reactor fuel, liquid wastes from reprocessing irradiated reactor fuel and solids into which such liquid wastes have been converted, and other high-level radioactive waste as defined by the U.S. Nuclear Regulatory Commission.

e. "Host state" means any state in which a regional facility is situated or is being developed.

f. "Low-level radioactive waste" or "waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel or by-product material as defined in section 11 e. (2) of the Atomic Energy Act of 1954, or as may be further defined by federal law or regulation.

g. "Party state" means any state which is a signatory party to this compact.

h. "Person" means any individual, corporation, business enterprise or other legal entity (either public or private).

i. "Region" means the collective party states.

j. "Regional facility" means (1) a facility as defined in this article which has been designated, authorized, accepted or approved by the Commission to receive waste or (2) the disposal facility in Barnwell County, South Carolina, owned by the State of South Carolina and as licensed for the burial of low-level radioactive waste on July 1, 1982, but in no event shall this disposal facility serve as a regional facility beyond December 31, 1992.

k. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

l. "Transuranic wastes" means waste material containing transuranic elements with contamination levels as determined by the regulations of (1) the U.S. Nuclear Regulatory Commission or (2) any host state, if it is an agreement under section 274 of the Atomic Energy Act of 1954.

m. "Waste management" means the storage, treatment or disposal of waste.

ARTICLE III. RIGHTS AND OBLIGATIONS

The rights granted to the party states by this compact are additional to the rights enjoyed by sovereign states, and nothing in this compact shall be construed to infringe upon, limit or abridge those rights.

a. Subject to any license issued by the U.S. Nuclear Regulatory Commission or a host state each party state shall have the right to have all wastes generated within its borders stored, treated, or disposed of, as applicable at regional facilities, and additionally shall have the right of access to facilities made available to the region through agreements entered into by the Commission pursuant to Article IV e. 9. The right of access by a generator within a party state to any regional facility is limited by its adherence to applicable state and federal law and regulation.

b. If no operating regional facility is located within the borders of a party state and the waste generated within its borders must therefore be stored, treated, or disposed of at a regional facility in another party state, the party state without such facilities may be required by the host state or states to establish a mechanism which provides compensation for access to the regional facility according to terms and conditions established by the host state(s) and approved by a two-thirds vote of the Commission.

c. Each party state shall establish the capability to regulate, license and ensure the maintenance and extended care of any facility within its borders. Host states are responsible for the availability, the subsequent post closure observation and maintenance, and the extended institutional control of their regional facilities, in accordance with the provisions of Article V, section b.

d. Each party state shall establish the capability to enforce any applicable federal or state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders.

e. Each party state shall provide to the Commission on an annual basis, any data and information necessary to the implementation of the Commission's responsibilities. Each party state shall establish the capability to obtain any data and information necessary to meet its obligation herein defined.

f. Each party state shall, to the extent authorized by federal law, require generators within its borders to use the best available waste management technologies and practices to minimize the volumes of wastes requiring disposal.

ARTICLE IV. THE COMMISSION

a. There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Commission ("the Commission" or "Compact Commission"). The Commission shall consist of two voting members from each party state to be appointed according to the laws of each state. The appointing authorities of each state must notify the Commission in writing of the identity of its members and any alternates. An alternate may act on behalf of the member only in the member's absence.

b. Each Commission member shall be entitled to one vote. No action of the Commission shall be binding unless a majority of the total membership cast their vote in the affirmative, or unless a greater than majority vote is specifically required by any other provision of this compact.

c. The Commission shall elect from among its members a presiding officer. The Commission shall adopt and publish, in convenient form, by-laws which are consistent with this compact.

d. The Commission shall meet at least once a year and shall also meet upon the call of the presiding officer, by petition of a majority of the party states, or upon the call of a host state. All meetings of the Commission shall be open to the public.

e. The Commission has the following duties and powers:

1. To receive and approve the application of a non-party state to become an eligible state in accordance with Article VII b.; and

2. To receive and approve the application of an eligible state to become a party state in accordance with Article VII c.; and

3. To submit an annual report and other communications to the governors and to the presiding officer of each body of the legislature of the party states regarding the activities of the Commission; and

4. To develop and use procedures for determining, consistent with considerations for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region; and

5. To provide the party states with reference guidelines for establishing the criteria and procedures for evaluating alternative locations for emergency or permanent regional facilities; and

6. To develop and adopt within one year after the Commission is constituted as provided for in Article VII, section d., procedures and criteria for identifying a party state as a host state for a regional facility as determined pursuant to the requirements of this article. In accordance with these procedures and criteria, the Commission shall identify a host state for the development of a second regional disposal facility within three years after the Commission is constituted as provided for in Article VII, section d. and shall seek to ensure that such facility is licensed and ready to operate as soon as required but in no event later than 1991.

In developing criteria, the Commission must consider the following: the health, safety, and welfare of the citizens of the party states; the existence of regional facilities within each party state; the minimization of waste transportation; the volumes and types of wastes generated within each party state; and the environmental, economic and ecological impacts on the air, land, and water resources of the party states.

The Commission shall conduct such hearings; require such reports, studies, evidence and testimony; and do what is required by its approved procedures in order to identify a party state as a host state for a needed facility; and

7. In accordance with the procedures and criteria developed pursuant to section e. 6. of this article, to designate, by a two-thirds vote, a host state for the establishment of a needed regional facility. The Commission shall not exercise this authority unless the party states have failed to voluntarily pursue the development of such facility. The Commission shall have the authority to revoke the membership of a party state that willfully creates barriers to the siting of a needed regional facility; and

8. To require of and obtain from party states, eligible states seeking to become party states, and non-party states seeking to become eligible states, data and information necessary to the implementation of Commission responsibilities; and

9. Notwithstanding any other provision of this compact, to enter into agreements with any person, state, or similar regional body or group of states for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. Such authorization to import requires a two-thirds majority vote of the Commission, including an affirmative vote of both

representatives of the host state in which any affected regional facility is located. This shall be done only after an assessment of the affected facilities' capability to handle such wastes; and

10. To act or appear on behalf of any party state or states, only upon written request of both members of the Commission for such state or states, as an intervenor or party in interest before Congress, state legislatures, any court of law, or federal, state or local agency, board or commission which has jurisdiction over the management of wastes.

The authority to act, intervene or otherwise appear shall be exercised by the Commission only after approval by a majority vote of the Commission.

11. To revoke the membership of a party state in accordance with Article VII f.

f. The Commission may establish such advisory committees as it deems necessary for the purpose of advising the Commission on any and all matters pertaining to the management of low-level radioactive waste.

g. The Commission may appoint or contract for and compensate such limited staff necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure irrespective of the civil service, personnel or other merit laws of any of the party states or the federal government and shall be compensated from funds of the Commission. In selecting any staff, the Commission shall assure that the staff has adequate experience and formal training to carry out such functions as may be assigned to it by the Commission. If the Commission has a headquarters it shall be in a party state.

h. Funding for the Commission shall be provided as follows:

1. Each eligible state, upon becoming a party state, shall pay $25,000 to the Commission which shall be used for costs of the Commission's services.

2. Each state hosting a regional disposal facility shall annually levy special fees or surcharges on all users of such facility, based upon the volume of wastes disposed of at such facilities, the total of which:

(a) Shall be sufficient to cover the annual budget of the Commission; and

(b) Shall represent the financial commitments of all party states to the Commission; and

(c) Shall be paid to the Commission, provided, however, that each host state collecting such fees or surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budgets of the Commission.

3. The Commission shall set and approve its first annual budget as soon as practicable after its initial meeting. Host states for disposal facilities shall begin imposition of the special fees and surcharges provided for in this section as soon as practicable after becoming party states, and shall remit to the Commission funds resulting from collection of such special fees and surcharges within sixty days of their receipt.

i. The Commission shall keep accurate accounts of all receipts and disbursements and independent certified public accountant shall annually audit all receipts and disbursements of Commission funds, and submit an audit report to the Commission. Such audit report shall be made a part of the annual report of the Commission required by Article IV e. 3.

j. The Commission may accept for any of its purposes and functions any and all donations, 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. The nature, amount and condition, if any, attendant upon any donation or grant accepted pursuant to this paragraph together with the identity of the donor, grantor or lender, shall be detailed in the annual report of the Commission.

k. The Commission shall not be responsible for any costs associated with (1) the creation of any facility, (2) the operation of any facility, (3) the stabilization and closure of any facility, (4) the post-closure observation, and maintenance of any facility, or (5) the extended institutional control, after post-closure observation and maintenance of any facility.

l. As of January 1, 1986, the management of wastes at regional facilities is restricted to wastes generated within the region, and to wastes generated within non-party states when authorized by the Commission pursuant to the provisions of this Compact. After January 1, 1986, the Commission may prohibit the exportation of waste from the region for the purposes of management.

m. 1. The Commission herein established is a legal entity separate and distinct from the party states, capable of acting in its own behalf, and shall be so liable for its actions. Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for action taken by them in their official capacity.

Except as specifically provided in this compact, nothing in this compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any causal or other relationships. Generators, transporters of wastes, owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

ARTICLE V. DEVELOPMENT AND OPERATION OF FACILITIES

a. Any party state which becomes a host state in which a regional facility is operated, shall not be designated by the Compact Commission as a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the Commission, to have a regional facility operated within its borders.

b. A host state desiring to close a regional facility located within its borders may do so only after notifying the Commission in writing of its intention to do so and the reasons therefore. Such notification shall be given to the Commission at least four years prior to the intended date of closure. Notwithstanding the four year notice requirement herein provided, a host state is not prevented from

closing its facility or establishing conditions of use and operations as necessary for the protection of the health and safety of its citizens. A host state may terminate or limit access to its regional facility if it determines Congress has materially altered the conditions of this compact.

c. Each party state designated as a host state for a regional facility shall take appropriate steps to ensure that an application for a license to construct and operate a facility of the designated type is filed with and issued by the appropriate authority.

d. No party state shall have any form of arbitrary prohibition on the treatment, storage or disposal of low-level radioactive waste within its border.

e. No party state shall be required to operate a regional facility for longer than a twenty-year period or to dispose of more than 32,000,000 cubic feet of low-level radioactive waste, whichever first occurs.

ARTICLE VI. OTHER LAWS AND REGULATIONS

a. Nothing in this compact shall be construed to:

1. Abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress;

2. Abrogate or limit the regulatory responsibility and authority of the U.S. Nuclear Regulatory Commission or of an agreement state under section 274 of the Atomic Energy Act of 1954 in which a regional facility is located;

3. Make inapplicable to any person or circumstance any other law of a party state which is not inconsistent with this compact;

4. Make unlawful the continued development and operation of any facility already licensed for development or operation on the date this compact becomes effective, except that any such facility shall comply with Article III, Article IV and Article V and shall be subject to any action lawfully taken pursuant thereto;

5. Prohibit any storage or treatment of waste by the generator on its own premises;

6. Affect any judicial or administrative proceeding pending on the effective date of this compact;

7. Alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions;

8. Affect the generation, treatment, storage or disposal of waste generated by the atomic energy defense activities of the Secretary of the U.S. Department of Energy or federal research and development activities as defined in P.L. 96-573;

9. Affect the rights and powers of any party state and its political subdivisions to regulate and license any facility within its borders or to affect the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.

b. No party state shall pass any law or adopt any regulation which is inconsistent with this compact. To do so may jeopardize the membership status of the party state.

c. Upon formation of the compact, no law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

d. Restrictions of waste management of regional facilities pursuant to Article IV I. shall be enforceable as a matter of state law.

ARTICLE VII. ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

a. This compact shall have as initially eligible parties the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee and Virginia.

b. Any state not expressly declared eligible to become a party state to this compact in section a. of this article may petition the Commission, once constituted, to be declared eligible. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state wishing to become eligible to become a party state to this compact pursuant to the provisions of this section. Upon satisfactorily meeting such conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of both representatives of a host state in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this compact and may become a party state in the same manner as those states declared eligible in section a. of this article.

c. Each state eligible to become a party state shall be declared a party state upon enactment of this compact into law by the state and upon payment of the fees required by Article IV, h. 1. The Commission shall be the sole judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this compact and the laws of the party states relating to the enactment of this compact.

d. 1. The first three states eligible to become party states to this compact which enact this compact into law and appropriate the fees required by Article IV, h. 1. shall immediately, upon the appointment of their Commission members, constitute themselves as the Southeast Low-Level Radioactive Waste Management Commission, shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this compact, and shall do those things necessary to organize the Commission and implement the provisions of this compact.

2. All succeeding states eligible to become party states to this compact shall be declared party states pursuant to the provisions of section c. of this article.

3. The consent of the Congress shall be required for full implementation of this compact. The provisions of Article V, d. shall not become effective until the effective date of the import ban authorized

by Article IV, I. as approved by Congress. The Congress may by law withdraw its consent only every five years.

e. No state which holds membership in any other regional compact for the management of low-level radioactive waste may be considered by the Compact Commission for eligible state status or party state status.

f. Any party state which fails to comply with the provisions of this compact or to fulfill the obligations incurred by becoming a party state to this compact may be subject to sanctions by the Commission, including suspension of its rights under this compact and revocation of its status as a party state. Any sanction shall be imposed only on the affirmative vote of at least two-thirds of the Commission members. Revocation of party state status may take effect on the date of the meeting at which the Commission approves the resolution imposing such sanction, but in no event shall revocation take effect later than 90 days from the date of such meeting. Rights and obligations incurred by being declared a party state to this compact shall continue until the effective date of the sanction imposed or as provided in the resolution of the Commission imposing the sanction.

The Commission shall, as soon as practicable after the meeting at which a resolution revoking status as a party state is approved, provide written notice of the action along with a copy of the resolution to the governors, the presidents of the senates, and the speakers of the house of representatives of the party states, as well as chairmen of the appropriate committees of the Congress.

g. Subject to provisions of Article VII, h., any party state may withdraw from this compact by enacting a law repealing the compact, provided that if a regional facility is located within such state, such regional facility shall remain available to the region for four years after the date the Commission receives verification in writing from the governor of such party state of the rescission of the compact. The Commission, upon receipt of the notification, shall as soon as practicable provide copies of such notification to the governors, the presidents of the senates, and the speakers of the house of representatives of the party states as well as the chairman of the appropriate committees of the Congress.

h. The right of a party state to withdraw pursuant to Article VII, g. shall terminate thirty days following the commencement of operation of the second host state disposal facility. Thereafter a party state may withdraw only with the unanimous approval of the Commission and with the consent of Congress. For purposes of this subsection, the low-level radioactive waste disposal facility located in Barnwell County, South Carolina shall be considered the first host state disposal facility.

i. This compact may be terminated only by the affirmative action of the Congress or by the rescission of all laws enacting the compact in each party state.

ARTICLE VIII. PENALTIES

a. Each party state, consistently with its own law, shall prescribe and enforce penalties against any person not an official of another state for violation of any provision of this compact.

b. Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws and regulations can result in imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

ARTICLE IX. SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared by a court of competent jurisdiction 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 and the applicability thereof to any other government, agency, person or circumstances shall not be affected thereby. If any provision of this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this compact shall be liberally construed to give effect to the purposes thereof.

1983, c. 213, § 32.1-238.6:1; 1988, cc. 390, 891.

§ 10.1-1501. Commissioners and alternates.

The Governor shall appoint two Commissioners and two alternates pursuant to Article IV, paragraph a. of the Compact, subject to confirmation by the General Assembly, to serve at his pleasure. The appointees shall be individuals qualified and experienced in the field of low-level radioactive waste generation, treatment, storage, transportation and disposal.

1982, c. 518, § 32.1-238.7; 1988, c. 891.

§ 10.1-1502. Expenses of Commissioners and alternates.

The Commissioners and alternates shall be reimbursed out of moneys appropriated for such purposes all sums which they necessarily expend in the discharge of their duties as members of the Southeast Interstate Low-Level Radioactive Waste Commission.

1982, c. 518, § 32.1-238.8; 1988, c. 891.

§ 10.1-1503. Cooperation of state and local agencies.

All agencies, departments and officers of the Commonwealth and its political subdivisions are hereby authorized and directed to cooperate with the Commission in the furtherance of activities pursuant to the Compact.

1982, c. 518, § 32.1-238.9; 1988, c. 891.

§ 10.1-1504. Board to enforce Compact; penalty.

The Virginia Waste Management Board is authorized to enforce the provisions of this chapter. Any person not an official of another party state to the Compact who violates any provision of this chapter shall be subject to a civil penalty of not more than $25,000 per day for each violation.

1991, c. 83 .

Chapter 16 - VIRGINIA RECREATIONAL FACILITIES AUTHORITY ACT

§ 10.1-1600. Definitions.

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

"Authority" means the Virginia Recreational Facilities Authority.

"Board" means the board of directors of the Authority.

"Bonds" means notes, bonds, certificates and other evidences of indebtedness or obligations of the Authority.

"Federal agency" means the United States of America, the President of the United States of America, and any department, corporation, agency, or instrumentality created, designated, or established by the United States of America.

"Project" means the construction, improvement, furnishing, maintenance, acquisition or operation of any facility that will further the purposes of the Authority, together with all property, rights, easements and interests which may be acquired by the Authority.

1986, c. 360, § 10-158.2; 1988, c. 891.

§ 10.1-1601. Authority created.

In order to (i) provide a high quality recreational attraction in the western part of the Commonwealth; (ii) expand the historical knowledge of adults and children; (iii) promote tourism and economic development in the Commonwealth; (iv) set aside and conserve scenic and natural areas along the Roanoke River and preserve open-space lands; and (v) enhance and expand research and educational programs, there is created a political subdivision of the Commonwealth to be known as "The Virginia Recreational Facilities Authority." The Authority's exercise of the powers conferred by this chapter shall be deemed to be the performance of an essential governmental function.

1986, c. 360, § 10-158.3; 1988, c. 891.

§ 10.1-1602. Board of directors.

The Authority shall be governed by a board of directors consisting of 19 members who shall be appointed as follows: two members of the Senate to be appointed by the Senate Committee on Rules; 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; and 13 nonlegislative citizen members to be appointed by the Governor, upon consideration of the recommendation of the River Foundation, if any, and subject to confirmation by the General Assembly. Nonlegislative citizen members of the Authority shall be citizens of the Commonwealth.

Legislative members 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 five years. Vacancies in the

membership of the Board shall be filled for the unexpired portion of the term in the same manner as original appointments are made. All members may be reappointed.

Immediately after appointment, the directors shall enter upon the performance of their duties. The Board shall annually elect a chairman and vice-chairman from its members, and shall also elect annually a secretary, who may or may not be a member of the Board. The Board may also elect other subordinate officers who may or may not be members of the Board, as it deems proper. Seven directors shall constitute a quorum for the transaction of the business of the Authority, and no vacancy in the membership of the Board 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 to direct the day-to-day activities of the Authority and carry out the powers and duties delegated to him. The executive director shall serve at the pleasure of the Board. The executive director 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.).

Legislative members of the Authority 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 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 Recreational Facilities Authority.

1986, c. 360, § 10-158.4; 1988, c. 891; 1989, c. 226; 1990, c. 210; 2005, c. 768; 2006, c. 22.

§ 10.1-1603. Powers of Authority.

The Authority is granted all powers necessary or convenient for carrying out its statutory purposes, including the following rights and powers:

1. To acquire by gift, devise, purchase, or otherwise, absolutely or in trust, and to hold, use, lease as lessee and unless otherwise restricted by the terms of the gift or devise, to lease as lessor, convey, sell or otherwise dispose of any property, real or personal, or any estate or interest therein including water rights. However, the Authority shall have no power to encumber its real property or create any estate or interest therein other than encumbrances on structures not extending to the real property upon which such structures are constructed.

2. To make and enter into any contracts and agreements with any appropriate person or federal agency. Such contracts include but are not limited to (i) agreements with the Commonwealth, or any agency thereof, to lease property owned or controlled by the Commonwealth, for the purpose of construction, improvement, maintenance, or operation of any project or activity that will further the purposes described in this chapter; and (ii) agreements with any person to sublease property owned or controlled by the Commonwealth or to issue licenses for the purpose of construction, improvement, maintenance, or operation of any project or activity that will further the purposes described in this chapter.

3. To plan, develop, carry out, construct, improve, rehabilitate, repair, furnish, maintain, and operate projects.

4. To promulgate regulations concerning the use of properties under its control to protect such property and the public thereon.

5. To 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. Such charges shall be used to pay the expenses of the Authority, the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties, the costs of accomplishing its purposes set forth in § 10.1-1601, and 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. Such fees, rents and charges shall not be subject to supervision or regulation by any commission, board, or agency of the Commonwealth or any political subdivision thereof.

6. To borrow money, make and issue bonds including bonds that the Authority may determine to issue for the purposes set forth in § 10.1-1601 or of refunding bonds previously issued by the Authority. The Authority shall have the right 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, tangible or intangible, or any interest therein. However, the Authority shall have no power to encumber its real property or create any estate or interest therein other than encumbrances on structures not extending to the real property upon which such structures are located. The bonds may be secured by a pledge of any grant or contribution from a person or federal agency. The Authority shall have the power to make agreements with the purchasers or holders of the bonds or with others in connection with the bonds, whether issued or to be issued, as it deems advisable, and in general to provide for the security for the bonds and the rights of the bond holders.

7. To employ 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.

8. To receive and accept from any federal agency, foundation, or person, grants, loans, gifts or contributions of money, property, or other things of value, to be held, used and applied only for the purposes for which the grant or contribution is made or to be expended in accomplishing the objectives of the Authority.

9. To develop, undertake and provide programs, alone or in conjunction with any person or federal agency, for scientific research, continuing education, and in-service training, provided that credit towards a degree, certificate or diploma shall be granted only if the education is provided in conjunction with an institution of higher education authorized to operate in the Commonwealth; and to foster the utilization of scientific research information, discoveries and data.

10. To 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.

11. To do all acts and things necessary or convenient to carry out the powers granted by this chapter or any other acts.

1986, c. 360, § 10-158.5; 1988, c. 891; 1991, c. 706.

§ 10.1-1604. Form, terms, and execution of bonds.

A. The bonds of each issue shall be dated, shall bear interest at rates fixed by the Authority, shall mature at a 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 a price and under terms and conditions fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of bonds and manner of execution of the bonds 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.

B. The bonds shall be signed by the chairman or vice-chairman of the Authority, or if authorized by the Authority, shall bear his facsimile signature, and the official seal of the Authority, or, if 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 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 or facsimile signature of the chairman or vice-chairman of the Authority. If any officer whose signature or facsimile signature appears on any bonds or coupons ceases to be an officer before the delivery of the bonds, the signature or facsimile shall nevertheless be valid for all purposes. Any bonds may bear the facsimile signature of, or may be signed by, persons who are the proper officers to sign the bonds at the actual time of the execution of such bonds although at the date of the bonds such persons may not have been officers.

1986, c. 360, § 10-158.6; 1988, c. 891.

§ 10.1-1605. Issuance and sale of bonds.

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 the manner, either at public or private sale, and for the price, that it determines will best effect the purposes of this chapter. Bonds may be issued under the provisions of this chapter without obtaining the consent of any commission, board or agency of the Commonwealth or of any political subdivision, and without any other proceedings or conditions other than those which are specifically required by this chapter.

1986, c. 360, § 10-158.6; 1988, c. 891.

§ 10.1-1606. Use of bond proceeds.

The proceeds of the bonds of each issue shall be used solely for the purposes of the Authority provided in the resolution authorizing the issuance of the bonds or in the trust agreement authorized in this chapter.

1986, c. 360, § 10-158.6; 1988, c. 891.

§ 10.1-1607. Interim receipts or temporary bonds.

The Authority is authorized to 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.

1986, c. 360, § 10-158.6; 1988, c. 891.

§ 10.1-1608. Faith and credit of Commonwealth or political subdivision not pledged.

No obligation of the Authority shall constitute a debt, or pledge of the faith and credit, of the Commonwealth or of any political subdivision, but shall be payable solely from the revenue and other funds of the Authority which have been pledged. All such obligations shall contain on the face a statement to the effect that the Commonwealth, political subdivisions, and the Authority shall not be obligated to pay the obligation or the interest except from revenues and other funds of the Authority which have been pledged, and that neither the faith and credit nor the taxing power of the Commonwealth or of any political subdivision is pledged to the payment of the principal of or the interest on such obligations.

1986, c. 360, § 10-158.6; 1988, c. 891.

§ 10.1-1609. Expenses of the Authority.

All expenses incurred in carrying out the provisions of this chapter shall be payable solely from funds provided under the provisions of this chapter and no liability shall be incurred by the Authority beyond the extent to which moneys are provided under the provisions of this chapter.

1986, c. 306, § 10-158.6; 1988, c. 891.

§ 10.1-1610. Trust agreement securing bonds.

In the discretion of the Authority any bonds issued under the provisions of this chapter may be secured by a trust agreement between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company. The trust agreement or the resolution providing for the issuance of bonds may pledge or assign the revenues to be received and provide for the mortgage of any project or property or any part thereof. However, the Authority shall have no power to encumber its real property or create any estate or interest therein other than encumbrances on structures not extending to the real property upon which such structures are located. The trust agreement or resolution may contain reasonable, proper and lawful provisions for protecting and enforcing the rights and remedies of the bondholders. The trust agreement or resolution may include 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 such 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 such indemnifying bonds or to pledge such securities as may be required by the Authority. The trust agreement may set forth the rights of action by bondholders and other provisions the Authority deems 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 operation of the project.

1986, c. 360, § 10-158.7; 1988, c. 891; 1991, c. 706.

§ 10.1-1611. Moneys received deemed trust funds.

All moneys received pursuant to the authority of this chapter, 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 chapter. 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 are deposited shall act as a trustee of such moneys and shall hold and apply the moneys for the purposes hereof, subject to such regulations as this chapter and the resolution or trust agreement may provide.

1986, c. 360, § 10-158.8; 1988, c. 891.

§ 10.1-1612. Proceedings by bondholder or trustee to enforce rights.

Any holder of bonds issued under the provisions of this chapter or any of the applicable coupons, 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 protect and enforce rights under the laws of the Commonwealth or under the trust agreement or resolution, and may enforce all duties required by this chapter 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.

1986, c. 360, § 10-158.9; 1988, c. 891.

§ 10.1-1613. Bonds made securities for investment and deposit.

Bonds issued by the Authority under the provisions of this chapter are hereby 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 are hereby made securities which 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 authorized by law.

1986, c. 360, § 10-158.10; 1988, c. 891.

§ 10.1-1614. Revenue refunding bonds; bonds for refunding and for cost of additional projects.

The Authority is authorized to provide for the issuance of revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding which have been issued under the provisions of this chapter, including the payment of any redemption premium and any interest accrued or to accrue

to the date of redemption of such bonds, and, if deemed advisable by the Authority, for the additional purpose of constructing improvements, extensions, or enlargements of the projects in connection with which the bonds to be refunded have been issued. The Authority is further authorized to provide by resolution for the issuance of its revenue bonds for the combined purpose of (i) refunding any bonds then outstanding which have been issued under the provisions of this chapter, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption of such bonds, and (ii) paying all or any part of the cost of any additional project or any portion thereof. The issuance of such bonds, the maturities and other details, the rights of the holders, and the rights, duties and obligations of the Authority shall be governed by the provisions of this chapter.

1986, c. 360, § 10-158.11; 1988, c. 891.

§ 10.1-1615. Grants or loans of public or private funds.

The Authority is authorized to accept, receive, receipt for, disburse, and expend federal and state moneys and other moneys, public or private, made available by grant, loan or otherwise, to accomplish any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and expended by the Authority upon terms and conditions prescribed by the United States and consistent with state law. All state moneys accepted under this section shall be accepted and expended by the Authority upon terms and conditions prescribed by the Commonwealth.

1986, c. 360, § 10-158.12; 1988, c. 891.

§ 10.1-1616. Exemption from taxes or assessments.

The exercise of the powers granted by this chapter is 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. Since the operation and maintenance of projects by the Authority and the undertaking of activities in furtherance of the purpose of the Authority will 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 chapter or upon the income therefrom, including sales and use taxes on tangible personal property used in the operations of the Authority. Any bonds issued under the provisions of this chapter, their transfer and the income which may result, including any profit made on the sale, shall be free from state and local taxation. The exemption hereby granted shall not be construed to extend to persons conducting business on the premises of a facility for which local or state taxes would otherwise be required.

1986, c. 360, § 10-158.13; 1988, c. 891.

§ 10.1-1617. 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 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 security for such deposits, if required by the Authority. The moneys in the accounts shall be paid out on the warrant or other order of the treasurer of the Authority or any person authorized by the Authority to execute such

warrants or orders. The Auditor of Public Accounts of the Commonwealth, and his legally authorized representatives, shall examine the accounts and books of the Authority.

1986, c. 360, § 10-158.15; 1988, c. 891.

§ 10.1-1618. Title to property.

The Authority may acquire title to property in its own name or in the name of the Commonwealth for and on behalf of the Authority. In the event the Authority ceases to operate its projects and to promote the purposes stated in § 10.1-1601 or is dissolved, the title to real property held by the Authority shall transfer to the Commonwealth and be administered by the Department of Conservation and Recreation; provided however, in the event that an environmental audit of any real property or interest therein, or portion of such property, to be transferred pursuant to this section discloses any environmental liability or violation of law or regulation, present or contingent, the Governor may reject the transfer of any portion of such property which he determines to be environmentally defective.

1986, c. 360, § 10-158.16; 1988, c. 891; 1991, c. 706.

§ 10.1-1619. Violation of regulations.

Violation of any regulation adopted pursuant to § 10.1-1603 which would have been a violation of law or ordinance if committed on a public street or highway shall be tried and punished as if it had been committed on a public street or highway. Any other violation of such regulations shall be punishable as a Class 1 misdemeanor.

1986, c. 360, § 10-158.17; 1988, c. 891.

§ 10.1-1620. Appointment of special conservators of the peace.

The chairman of the Authority or his designee may apply to the circuit court of any county or city for the appointment of one or more special conservators of the peace under procedures specified by § 19.2-13.

1986, c. 360, § 10-158.18; 1988, c. 891.

§ 10.1-1621. Conveyance or lease of park to Authority.

The Commonwealth or any county, municipality, or other public body is authorized to convey or lease to the Authority, with or without consideration, any property to use for projects that will further the purposes described in this chapter.

1986, c. 360, § 10-158.19; 1988, c. 891.

§ 10.1-1622. Recordation of conveyances of real estate to Authority.

No deed purporting to convey real estate to the Authority shall be recorded unless accepted by a person authorized to act on behalf of the Authority, which acceptance shall appear on the face of the deed.

1986, c. 360, § 10-158.20; 1988, c. 891.

Chapter 17 - OPEN-SPACE LAND ACT

§ 10.1-1700. Definitions.

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

"Open-space easement" means a nonpossessory interest of a public body in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

"Open-space land" means any land which is provided or preserved for (i) park or recreational purposes, (ii) conservation of land or other natural resources, (iii) historic or scenic purposes, (iv) assisting in the shaping of the character, direction, and timing of community development, (v) wetlands as defined in § 28.2-1300, or (vi) agricultural and forestal production.

"Public body" means any state agency having authority to acquire land for a public use, or any county or municipality, any park authority, any public recreational facilities authority, any soil and water conservation district, any community development authority formed pursuant to Article 6 (§ 15.2-5152 et seq.) of Chapter 51 of Title 15.2, or the Virginia Recreational Facilities Authority.

1966, c. 461, § 10-156; 1974, c. 348; 1986, c. 360; 1988, c. 891; 1997, c. 130; 2000, cc. 181, 724, 747; 2011, cc. 85, 159.

§ 10.1-1701. Authority of public bodies to acquire or designate property for use as open-space land.

To carry out the purposes of this chapter, any public body may (i) acquire by purchase, gift, devise, bequest, grant or otherwise title to or any interests or rights of not less than five years' duration in real property that will provide a means for the preservation or provision of open-space land and (ii) designate any real property in which it has an interest of not less than five years' duration to be retained and used for the preservation and provision of open-space land. Any such interest may also be perpetual.

The use of the real property for open-space land shall conform to the official comprehensive plan for the area in which the property is located. No property or interest therein shall be acquired by eminent domain by any public body for the purposes of this chapter; however, this provision shall not limit the power of eminent domain as it was possessed by any public body prior to the passage of this chapter.

1966, c. 461, § 10-152; 1974, c. 259; 1981, c. 64; 1988, c. 891.

§ 10.1-1702. Further powers of public bodies.

A. A public body shall have the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers:

1. To borrow funds and make expenditures;

2. To advance or accept advances of public funds;

3. To apply for and accept and utilize grants and any other assistance from the federal government and any other public or private sources, to give such security as may be required and to enter into and carry out contracts or agreements in connection with the assistance, and to include in any contract for assistance from the federal government such conditions imposed pursuant to federal laws as the public body may deem reasonable and appropriate and which are not inconsistent with the purposes of this chapter;

4. To make and execute contracts and other instruments;

5. In connection with the real property acquired and designated for the purposes of this chapter, to provide or to arrange or contract for the provision, construction, maintenance, operation, or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities or structures that may be necessary to the provision, preservation, maintenance and management of the property as open-space land;

6. To insure or provide for the insurance of any real or personal property or operations of the public body against any risks or hazards, including the power to pay premiums on the insurance;

7. To demolish or dispose of any structures or facilities which may be detrimental to or inconsistent with the use of real property as open-space land; and

8. To exercise its functions and powers under this chapter jointly or cooperatively with public bodies of one or more states, if they are so authorized by state law, and with one or more public bodies of this Commonwealth, and to enter into agreements for joint or cooperative action.

B. For the purposes of this chapter, the Commonwealth or a county, city or town may:

1. Appropriate funds;

2. Issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the Commonwealth;

3. Exercise its powers under this chapter through a board or commission, or through such office or officers as its governing body by resolution determines or as the Governor determines in the case of the Commonwealth; and

4. Levy taxes and assessments.

1966, c. 461, § 10-154; 1988, c. 891.

§ 10.1-1703. Acquisition of title subject to reservation of farming or timber rights; acquisition of easements, etc.; property to be made available for farming and timber uses.

Any public body is authorized to acquire (i) unrestricted fee simple title to tracts; (ii) fee simple title to such land subject to reservation of rights to use such lands for farming or to reservation of timber rights thereon; or (iii) easements in gross or such other interests in real estate of not less than five years' duration as are designed to maintain the character of such land as open-space land. Any such interest may also be perpetual. Whenever practicable in the judgment of the public body, real property

acquired pursuant to this chapter shall be made available for agricultural and timbering uses which are compatible with the purposes of this chapter.

1966, c. 461, § 10-158; 1974, c. 259; 1981, c. 64; 1988, c. 891.

§ 10.1-1704. Diversion of property from open-space land use; conveyance or lease of open-space land.

A. No open-space land, the title to or interest or right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, shall be converted or diverted from open-space land use unless (i) the conversion or diversion is determined by the public body to be (a) essential to the orderly development and growth of the locality and (b) in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion and (ii) there is substituted other real property which is (a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted. The public body shall assure that the property substituted will be subject to the provisions of this chapter.

B. A public body may convey or lease any real property it has acquired and which has been designated for the purposes of this chapter. The conveyance or lease shall be subject to contractual arrangements that will preserve the property as open-space land, unless the property is to be converted or diverted from open-space land use in accordance with the provisions of subsection A of this section.

1966, c. 461, § 10-153; 1988, c. 891; 1997, c. 338.

§ 10.1-1705. Chapter controlling over other 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. The powers conferred by this chapter shall be in addition and supplemental to the powers conferred by any other law.

1966, c. 461, § 10-157; 1988, c. 891.

Chapter 18 - VIRGINIA OUTDOORS FOUNDATION

§ 10.1-1800. Establishment and administration of Foundation; appointment, terms, chairman, quorum, etc., of board of trustees.

The Virginia Outdoors Foundation is established to promote the preservation of open-space lands and to encourage private gifts of money, securities, land or other property to preserve the natural, scenic, historic, scientific, open-space and recreational areas of the Commonwealth. The Virginia Outdoors Foundation is a body politic and shall be governed and administered by a board of trustees composed of seven trustees from the Commonwealth at large to be appointed by the Governor for four-year terms. Appointments shall be made to achieve a broad geographical representation of members. Vacancies shall be filled for the unexpired term. No trustee-at-large shall be eligible to serve more

than two consecutive four-year terms. All trustees-at-large shall post bond in the penalty of $5,000 with the State Comptroller prior to entering upon the functions of office.

The Governor shall appoint a chairman of the board from among the seven trustees-at-large to a two-year term. No member shall be eligible to serve more than two consecutive terms as chairman. A majority of the members of the board serving at any one time shall constitute a quorum for the transaction of business.

1966, c. 525, §§ 10-159 to 10-162; 1970, c. 757; 1988, c. 891; 1991, c. 190; 2000, cc. 21, 294; 2003, cc. 78, 90; 2011, cc. 691, 714.

§ 10.1-1801. Powers of Foundation.

The Virginia Outdoors Foundation shall have the following general powers:

1. To have succession until dissolved by the General Assembly, in which event title to the properties of the Foundation, both real and personal, shall, insofar as consistent with existing contractual obligations and subject to all other legally enforceable claims or demands by or against the Foundation, pass to and become vested in the Commonwealth;

2. To sue and be sued in contractual matters in its own name;

3. To promulgate regulations as it deems necessary for the administration of its functions in accordance with the Administrative Process Act (§ 2.2-4000 et seq.);

4. To 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. Unless otherwise restricted by the terms of the gift or bequest, the Foundation is authorized to sell, exchange, or otherwise dispose of and to invest or reinvest in such investments as it may determine the moneys, securities, or other property given or bequeathed to it. The principal of such funds, together with the income therefrom and all other revenues, shall be placed in such depositories as the Foundation shall determine and shall constitute a special fund and be subject to expenditure by the Foundation without further appropriation. The Foundation shall not engage in any business except in the furtherance of its objectives;

5. To acquire by gift, devise, purchase, or otherwise, absolutely or in trust, and to hold and, unless otherwise restricted by the terms of the gift or devise, to encumber, convey, or otherwise dispose of, any real property, or any estate or interest therein, as may be necessary and proper in carrying into effect the purposes of the Foundation;

6. To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

7. To appoint and prescribe the duties of such officers, agents, and employees as may be necessary to carry out its functions, and to fix and pay such compensation to them for their services as the Foundation may determine; and

8. To perform any lawful acts necessary or appropriate to carry out the purposes of the Foundation.

1966, c. 525, § 10-163; 1988, c. 891.

§ 10.1-1801.1. Open-Space Lands Preservation Trust Fund.

A. The Foundation shall establish, administer, manage, including the creation of reserves, and make expenditures and allocations from a special nonreverting fund in the state treasury to be known as the Open-Space Lands Preservation Trust Fund, hereinafter referred to as the Fund. The Foundation shall establish and administer the Fund solely for the purpose of providing grants in accordance with this section to localities acquiring fee simple title or other rights, interests, or privileges in property or persons conveying to the Foundation fee simple title or other rights, interests, or privileges in property on agricultural, forestal, or other open-space land pursuant to the Open-Space Land Act (§ 10.1-1700 et seq.) and, if applicable, the Virginia Conservation Easement Act (§ 10.1-1009 et seq.).

B. The Fund shall consist of general fund moneys, gifts, endowments or grants from the United States government, its agencies and instrumentalities, and funds from any other available sources, public or private.

C. Any moneys remaining in the Fund at the end of a biennium shall remain in the Fund, and shall not revert to the general fund. Interest earned on moneys received by the Fund shall remain in the Fund and be credited to it.

D. The purpose of grants made from the Fund shall be to aid localities acquiring fee simple title or other rights, interests, or privileges in property or persons conveying to the Foundation fee simple title or other rights, interests, or privileges in property with the costs associated with the conveyance of the property interest, which may include legal costs, appraisal costs, or all or part of the value of the property interest. In cases where a grant is used to purchase all or part of the value of a property interest, moneys from the Fund may also be used by the Foundation to pay for an appraisal, provided that the appraisal is the only appraisal paid for by the Foundation in the acquisition of a particular property interest. To be eligible for a grant award, the property interest shall be compliant with the Open-Space Land Act (§ 10.1-1700 et seq.).

E. The Foundation shall establish guidelines for submittal and evaluation of grant applications. In evaluating grant applications, the Foundation may give priority to applications that:

1. Request a grant to pay only legal and appraisal fees for a property interest that is being donated by the landowner;

2. Request a grant to pay costs associated with conveying a property interest on a family-owned or family-operated farm; or

3. Demonstrate the applicant's financial need for a grant.

F. No open-space land for which a grant has been awarded under this section shall be converted or diverted from open-space land use unless:

1. Such conversion or diversion is in compliance with subsection A of § 10.1-1704; and

2. Any open-space easement on the land substituted for land subject to an easement with respect to which a grant has been made under this section meets the eligibility requirements of this section.

G. Up to $100,000 per year of any interest generated by the Fund may be used for the Foundation's administrative expenses.

1997, c. 338; 1999, c. 927; 2000, c. 181; 2003, cc. 78, 90; 2009, c. 599; 2020, c. 567.

§ 10.1-1801.2. Repealed.

Repealed by Acts 2003, cc. 78 and 90, cl. 2.

§ 10.1-1802. Annual report.

The Foundation shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. The report shall contain, at a minimum, the annual financial statements of the Foundation for the year ending the preceding June 30.

1966, c. 525, § 10-164; 1984, c. 734; 1985, c. 146; 1988, c. 891; 2004, c. 650.

§ 10.1-1803. Gifts, devises and bequests.

Gifts, devises or bequests, whether personal or real property, and the income therefrom, accepted by the Foundation, shall be deemed to be gifts to the Commonwealth, which shall be exempt from all state and local taxes, and shall be regarded as the property of the Commonwealth for the purposes of all tax laws.

1966, c. 525, § 10-165; 1988, c. 891.

§ 10.1-1804. Cooperation of state agencies, etc.

All state officers, agencies, commissions, departments, and institutions are directed to cooperate with and assist the Virginia Outdoors Foundation in carrying out its purpose, and to that end may accept any gift or conveyance of land or other property in the name of the Commonwealth from the Foundation. Such property shall be held in possession or used as provided in the terms of the trust, contract, or instrument by which it is conveyed.

1966, c. 525, § 10-166; 1988, c. 891.

Chapter 19 - VIRGINIA BEACH EROSION COUNCIL [Repealed]

§§ 10.1-1900, 10.1-1901. Repealed.

Repealed by Acts 1989, c. 659.

Chapter 20 - VIRGINIA MUSEUM OF NATURAL HISTORY

§ 10.1-2000. Museum created; essential governmental function.

There is hereby created an institution of the Commonwealth of Virginia to be known as "The Virginia Museum of Natural History," hereinafter referred to as the "Museum." The Museum is hereby declared to be a public body and instrumentality for the purpose of preserving and protecting Virginia's natural history. The exercise by the Museum of the powers conferred by this chapter shall be deemed an essential governmental function.

1988, cc. 707, 891.

§ 10.1-2001. Purposes.

The purposes of the Virginia Museum of Natural History are:

1. To investigate, preserve and exhibit the various elements of natural history found in Virginia and other parts of the United States and the world;

2. To foster an understanding and appreciation of how man and the earth have evolved;

3. To encourage and promote research in the varied natural heritage of Virginia and other parts of the world;

4. To encourage individuals and scholars to study our natural history and to apply this understanding of the past to the challenge of the future;

5. To establish a state museum of natural history in Virginia where specimens of natural history, especially those of Virginia origin, can be properly housed, cared for, cataloged and studied and to ensure a permanent repository of our natural heritage; and

6. To coordinate an efficient network in Virginia where researchers and the public can readily use the natural history material of the Museum, its branches, Virginia's institutions of higher education and other museums. These purposes are hereby declared to be a matter of legislative determination.

1988, cc. 707, 891.

§ 10.1-2002. Board of trustees; appointment of members.

The Museum shall be governed by a board of trustees consisting of 15 members appointed by the Governor. Two of the members appointed to the Board shall be members of the Virginia Academy of Science. The appointments shall be subject to confirmation by the General Assembly if in session and, if not, then at its next succeeding session. The Board of Trustees shall be referred to as the "Board."

1988, cc. 707, 891; 2012, c. 502.

§ 10.1-2003. Terms of members; vacancies.

The members of the Board shall be appointed for terms of five years each, except that the initial appointments to the Board shall be for such terms of less than five years as may be necessary to stagger the expiration of terms so that the terms of not more than seven members expire in any one year. Members of the Board may be suspended or removed by the Governor at his pleasure and the unexpired term of any member shall lapse upon his failure for any reason to attend four consecutive regular meetings of the Board. The initial appointments of members for terms of less than five years shall be deemed appointments to fill vacancies. No person shall be eligible to serve for or during more than two successive terms; however, any person appointed to fill a vacancy may be eligible for two additional successive terms after the term of the vacancy for which he was appointed has expired. The members of the Board shall receive no salaries.

1988, cc. 707, 891; 2001, c. 163.

§ 10.1-2004. Annual meeting; Officers of Board; executive committee.

The Board shall designate one regular meeting to be held annually each fiscal year. At each regular annual meeting, the Board shall select a chairman and a vice-chairman from its membership, and appoint an executive committee to consist of not less than three nor more than five of its membership, including the chairman and vice-chairman for the transaction of business in the recess of the Board.

1988, cc. 707, 891; 2001, c. 163.

§ 10.1-2005. Oath of members.

Before entering upon the discharge of his duties, each member of the Board shall take the usual oath of office.

1988, cc. 707, 891.

§ 10.1-2006. Bonds of members.

Each member of the Board shall give bond, with corporate surety, in such penalty as is fixed by the Governor, conditioned upon the faithful discharge of his duties. The premium on the bonds shall be paid from funds available to the Museum.

1988, cc. 707, 891.

§ 10.1-2007. Meetings of Board.

The Board shall establish a regular meeting schedule and may meet at such other times as it deems appropriate or upon call of the chairman, when in his opinion a meeting is expedient or necessary.

1988, cc. 707, 891; 2001, c. 163.

§ 10.1-2008. Quorum of Board.

A simple majority of the members of the Board then serving shall constitute a quorum. In absence of a quorum, and provided that the chairman or vice-chairman and at least two other members of the Board are present, a meeting may proceed to receive information, but not take any action upon, items listed on the meeting agenda distributed in advance to the full membership.

1988, cc. 707, 891; 2001, c. 163.

§ 10.1-2009. Powers and duties of Board.

A. The Board is hereby authorized:

1. To manage, control, maintain and operate the Museum and to provide for the erection, care and preservation of all property belonging to the Museum;

2. To appoint the Director of the Museum, and prescribe his duties and salary and to employ such deputies and assistants as may be required;

3. To prescribe rules and regulations for the operation of the Museum, including, but not limited to, the kinds and types of research, instruction and exhibits, and the making of plans for expansion of the Museum;

4. To employ planning consultants and architects in relation to expansion of the Museum;

5. To acquire by purchase, gift, loan or otherwise land necessary for establishment and expansion of the Museum, and exhibits and displays;

6. To enter into agreements with institutions of higher education in the Commonwealth to work cooperatively on research projects of mutual interest and benefit;

7. To establish a foundation to assist in fund raising efforts to supplement the state funds provided to the Museum;

8. To enter into contracts for construction of physical facilities;

9. To enter into contracts approved by the Attorney General to further the purposes of the Museum;

10. To adopt a seal, flag or other emblems; and

11. To charge for admission to the Museum, if deemed appropriate.

B. With prior annual written approval of the Governor, the Board of Trustees of the Virginia Museum of Natural History may supplement the salary of the Director of the Museum from nonstate funds. In approving a supplement, the Governor may be guided by criteria that provide a reasonable limit on the total additional income of the Director. The criteria may include, but need not be limited to, a consideration of the salaries paid to similar officials at comparable museums of other states. The Board shall report approved supplements to the Department of Human Resource Management for retention in its records.

1988, cc. 707, 891; 2004, c. 870.

§ 10.1-2010. Agents and employees.

The Director may engage or authorize the engagement of agents and employees necessary to the operation and maintenance of the Museum, subject to the approval of the Board.

1988, cc. 707, 891.

§ 10.1-2011. Acceptance of gifts; expenditures; certain powers of educational institutions to apply.

A. The Board is authorized to receive and administer grants from agencies of the United States government, and gifts, bequests and devises of property, and to expend or authorize the expenditure of funds derived from such sources and funds appropriated by the General Assembly to the Museum.

B. Notwithstanding any law to the contrary, the Museum shall be deemed to be an institution of higher education within the meaning of §§ 23.1-101 and 23.1-103.

1988, cc. 707, 891; 2004, c. 870.

§ 10.1-2012. Annual report.

The Board of Trustees shall submit an annual report to the Governor and General Assembly on or before November 1 of each year. Such report shall contain, at a minimum, the annual financial statements of the Museum for the year ending the preceding June 30.

1988, cc. 707, 891; 2004, c. 650.

Chapter 21 - CHESAPEAKE BAY PRESERVATION ACT

Article 1 - GENERAL PROVISIONS

§§ 10.1-2100, 10.1-2101. Repealed.

Repealed by Acts 2013, cc. 756 and 793, cl. 2.

§ 10.1-2102. Repealed.

Repealed by Acts 2012, cc. 785 and 819, cl. 2.

§§ 10.1-2103 through 10.1-2104.1. Repealed.

Repealed by Acts 2013, cc. 756 and 793, cl. 2.

§ 10.1-2105. Repealed.

Repealed by Acts 2005, c. 41, c. 2.

§§ 10.1-2106 through 10.1-2111. Repealed.

Repealed by Acts 2013, cc. 756 and 793, cl. 2.

§ 10.1-2112. Repealed.

Repealed by Acts 2012, cc. 785 and 819, cl. 2.

§§ 10.1-2113 through 10.1-2115. Repealed.

Repealed by Acts 2013, cc. 756 and 793, cl. 2.

Article 2 - CHESAPEAKE BAY ADVISORY COMMITTEE

§ 10.1-2116. Repealed.

Repealed by Acts 2004, c. 1000.

Chapter 21.1 - VIRGINIA WATER QUALITY IMPROVEMENT ACT OF 1997

Article 1 - GENERAL PROVISIONS

§ 10.1-2117. Definitions.

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

"Biological nutrient removal technology" means technology that will typically achieve at least an 8 mg/L total nitrogen concentration or at least a 1 mg/L total phosphorus concentration in effluent discharges.

"Chesapeake Bay Agreement" means the Chesapeake Bay Agreement of 2000 and any amendments thereto.

"Eligible nonsignificant discharger" means any publicly owned treatment works that is not a significant discharger but due to expansion or new construction is subject to a technology-based standard under § 62.1-44.19:15 or 62.1-44.19:16.

"Fund" means the Virginia Water Quality Improvement Fund established by Article 4 (§ 10.1-2128 et seq.).

"Individual" means any corporation, foundation, association or partnership or one or more natural persons.

"Institutions of higher education" means any educational institution meeting the requirements of § 60.2-220.

"Local government" means any county, city, town, municipal corporation, authority, district, commission or political subdivision of the Commonwealth.

"Nonpoint source pollution" means pollution of state waters washed from the land surface in a diffuse manner and not resulting from a discernible, defined or discrete conveyance.

"Nutrient removal technology" means state-of-the-art nutrient removal technology, biological nutrient removal technology, or other nutrient removal technology.

"Point source pollution" means pollution of state waters resulting from any discernible, defined or discrete conveyances.

"Publicly owned treatment works" means a publicly owned sewage collection system consisting of pipelines or conduits, pumping stations and force mains, and all other construction, devices, and appliances appurtenant thereto, or any equipment, plant, treatment works, structure, machinery, apparatus, interest in land, or any combination of these, not including an onsite sewage system, that is used, operated, acquired, or constructed for the storage, collection, treatment, neutralization, stabilization, reduction, recycling, reclamation, separation, or disposal of wastewater, or for the final disposal of residues resulting from the treatment of sewage, including but not limited to: treatment or disposal plants; outfall sewers, interceptor sewers, and collector sewers; pumping and ventilating stations, facilities, and works; and other real or personal property and appurtenances incident to their development, use, or operation.

"Reasonable sewer costs" means the amount expended per household for sewer service in relation to the median household income of the service area as determined by guidelines developed and approved by the State Water Control Board for use with the Virginia Water Facilities Revolving Fund established pursuant to Chapter 22 (§ 62.1-224 et seq.) of Title 62.1.

"Significant discharger" means (i) a publicly owned treatment works discharging to the Chesapeake Bay watershed with a design capacity of 0.5 million gallons per day or greater, (ii) a publicly owned treatment works discharging to the Chesapeake Bay watershed east of the fall line with a design capacity of 0.1 million gallons per day or greater, (iii) a planned or newly expanding publicly owned treatment works discharging to the Chesapeake Bay watershed, which is expected to be in operation by 2010 with a permitted design of 0.5 million gallons per day or greater, or (iv) a planned or newly expanding publicly owned treatment works discharging to the Chesapeake Bay watershed east of the

fall line with a design capacity of 0.1 million gallons per day or greater, which is expected to be in operation by 2010.

"State-of-the-art nutrient removal technology" means technology that will achieve at least a 3 mg/L total nitrogen concentration or at least a 0.3 mg/L total phosphorus concentration in effluent discharges.

"State waters" means all waters on the surface or under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdictions.

"Water Quality Improvement Grants" means grants available from the Fund for projects of local governments, institutions of higher education, and individuals (i) to achieve nutrient reduction goals in regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan or (ii) to achieve other water quality restoration, protection or enhancement benefits.

1997, cc. 21, 625, 626; 1999, c. 257; 2005, cc. 704, 707, 709; 2006, c. 236; 2007, c. 924; 2015, c. 164.

§ 10.1-2118. Cooperative program established.

It shall be the policy of the Commonwealth, and it is the purpose of this chapter, to restore and improve the quality of state waters and to protect them from impairment and destruction for the benefit of current and future citizens of the Commonwealth. The General Assembly further determines and finds that the quality of state waters is subject to potential pollution and degradation, including excess nutrients, from both point and nonpoint source pollution and that the purposes of the State Water Control Law (§ 62.1-44.2 et seq.) and all other laws related to the restoration, protection and improvement of the quality of state waters will be enhanced by the implementation of the provisions of this chapter. The General Assembly further determines and finds that the restoration, protection and improvement of the quality of state waters is a shared responsibility among state and local governments and individuals and to that end this chapter establishes cooperative programs related to nutrient reduction and other point and nonpoint sources of pollution.

1997, cc. 21, 625, 626.

§ 10.1-2119. Effect of chapter on other governmental authority.

The authorities and powers granted by the provisions of this chapter are supplemental to other state and local governmental authority and do not limit in any way other water quality restoration, protection and enhancement authority of any agency or local government of the Commonwealth. All counties, cities and towns are authorized to exercise their police and zoning powers to protect the quality of state waters from nonpoint source pollution as provided in this Code.

1997, cc. 21, 625, 626.

Article 2 - COOPERATIVE POINT SOURCE POLLUTION PROGRAM

§ 10.1-2120. Definitions.

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

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

1997, cc. 21, 625, 626.

§ 10.1-2121. Cooperative point source pollution program.

In order to restore, protect and improve the quality of the bays, lakes, rivers, streams, creeks, and other state waters, and to achieve the pollution reduction goals, including those related to nutrient reduction, established in commitments made by the Commonwealth to water quality restoration, protection and improvement, including but not limited to the Chesapeake Bay Agreement, as amended, the Department shall assist local governments and individuals in the control of point source pollution, including nutrient reductions, through technical and financial assistance made available through grants provided from the Fund. In providing this technical and financial assistance the Department shall give initial priority to local government capital construction projects designed to achieve nutrient reduction goals, as provided in § 10.1-2131, consistent with those established in the Chesapeake Bay Agreement, as amended, and thereafter to efforts consistent with other commitments made by the Commonwealth. In pursuing implementation of this cooperative program, it is the intent of the Commonwealth to annually seek and provide funding necessary to meet its commitments under any fully executed grant agreement pursuant to the provisions of §§ 10.1-2130 and 10.1-2131.

1997, cc. 21, 625, 626.

§ 10.1-2122. Additional powers and duties of the Director.

In furtherance of the purposes of this article, the Director is authorized to utilize the Fund for the purpose of providing Water Quality Improvement Grants as prescribed in Article 4 (§ 10.1-2128 et seq.) of this chapter.

1997, cc. 21, 625, 626.

Article 3 - COOPERATIVE NONPOINT SOURCE POLLUTION PROGRAM

§ 10.1-2123. Definitions.

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

"Board" means the State Water Control Board.

"Department" means the Department of Environmental Quality.

"Director" means the Director of the Department of Environmental Quality.

1997, cc. 21, 625, 626; 2013, cc. 756, 793.

§ 10.1-2124. Cooperative nonpoint source pollution program.

A. The state has the responsibility under Article XI of the Constitution of Virginia to protect the bays, lakes, rivers, streams, creeks, and other state waters of the Commonwealth from pollution and impairment. Commercial and residential development of land as well as agricultural and other land uses may cause the impairment of state waters through nonpoint source pollution. In the exercise of their authority to control land use and development, it is the responsibility of counties, cities, and towns to

consider the protection of all bays, lakes, rivers, streams, creeks, and other state waters from nonpoint source pollution. The exercise of environmental stewardship by individuals is necessary to protect state waters from nonpoint source pollution. To promote achievement of the directives of Article XI of the Constitution of Virginia and to implement the cooperative programs established by this chapter, the state shall assist local governments, soil and water conservation districts and individuals in restoring, protecting and improving water quality through grants provided from the Fund.

B. In order to restore, protect, and improve the quality of all bays, lakes, rivers, streams, creeks, and other state waters, and to achieve the pollution reduction goals, including nutrient reduction goals, established in commitments made by the Commonwealth to water quality restoration, protection, and enhancement, including but not limited to the Chesapeake Bay Agreement, as amended, the Department shall assist local governments, soil and water conservation districts, and individuals in the control of nonpoint source pollution, including nutrient reduction, through technical and financial assistance made available through grants provided from the Fund as provided in § 10.1-2132.

C. In order to engage stakeholders within each of the Commonwealth's 14 major river basins to develop comprehensive strategic plans to mitigate and prevent local nonpoint source water pollution, the Department may establish the Watershed Coordination Program, hereinafter referred to as "the Program." The Program shall continue the work of watershed roundtables, support citizen stewardship activities, and be coordinated with the agencies of the Secretariat of Natural Resources, the Department of Forestry, and the Department of Agriculture and Consumer Services. The Program shall be funded with private funds; however, the Department may assist with the initial costs associated with the development of the Program to the extent that funding is available. The Department may assist in fund-raising efforts to supplement the Fund and provide assistance to the fund-raising efforts of the watershed roundtables. The Program shall strive to provide appropriate incentives for achievements to include public recognition and awards.

1997, cc. 21, 625, 626; 2004, c. 413.

§ 10.1-2125. Powers and duties of the Board.

The Board, in meeting its responsibilities under the cooperative program established by this article, after consultation with other appropriate agencies, is authorized and has the duty to:

1. Encourage and promote nonpoint source pollution control and prevention, including nutrient control and prevention, for the: (i) protection of public drinking water supplies; (ii) promotion of water resource conservation; (iii) protection of existing high quality state waters and restoration of all other state waters to a condition or quality that will permit all reasonable beneficial uses and will support the propagation and growth of all aquatic life, including finfish and shellfish, which might reasonably be expected to inhabit them; (iv) protection of all state waters from nonpoint source pollution; (v) prevention of any increase in nonpoint source pollution; (vi) reduction of existing nonpoint source pollution; (vii) attainment and maintenance of water quality standards established under subdivisions (3a) and (3b) of § 62.1-44.15; and (viii) attainment of commitments made by the Commonwealth to water

quality restoration, protection and enhancement including the goals of the Chesapeake Bay Agreement, as amended, all in order to provide for the health, safety and welfare of the present and future citizens of the Commonwealth.

2. Provide technical assistance and advice to local governments and individuals concerning aspects of water quality restoration, protection and improvement relevant to nonpoint source pollution.

3. Apply for, and accept, federal funds and funds from any other source, public or private, that may become available and to transmit such funds to the Fund for the purpose of providing Water Quality Improvement Grants as prescribed in Article 4 (§ 10.1-2128 et seq.) of this chapter.

4. Enter into contracts necessary and convenient to carry out the provisions of this article.

5. Seek the assistance of other state agencies and entities including but not limited to the Department of Forestry and the Virginia Soil and Water Conservation Board as appropriate in carrying out its responsibilities under this chapter.

1997, cc. 21, 625, 626; 2005, c. 41.

§ 10.1-2126. Additional powers and duties of Director.

A. In furtherance of the purposes of this article, the Director is authorized to utilize the Fund for the purpose of providing Water Quality Improvement Grants as prescribed in Article 4 (§ 10.1-2128 et seq.) of this chapter.

B. The Director shall be vested with the authority of the Board when the Board is not in session, subject to such limitations as may be prescribed by the Board. In no event shall the Director have the authority to promulgate any final regulation pursuant to the provisions of this chapter.

1997, cc. 21, 625, 626.

§ 10.1-2127. Nonpoint source pollution water quality assessment.

A. The Department, in conjunction with other state agencies, shall evaluate and report on the impacts of nonpoint source pollution on water quality and water quality improvement to the Governor and the General Assembly. This evaluation shall be incorporated into the § 305(b) water quality report of the Clean Water Act developed pursuant to § 62.1-44.19:5. The evaluation shall at a minimum include considerations of water quality standards, fishing bans, shellfish contamination, aquatic life monitoring, sediment sampling, fish tissue sampling and human health standards. The report shall be produced in accordance with the schedule required by federal law, but shall incorporate at least the preceding five years of data. Data older than five years shall be incorporated when scientifically appropriate for trend analysis. The report shall, at a minimum, include an assessment of the geographic regions where water quality is demonstrated to be impaired or degraded as the result of nonpoint source pollution and an evaluation of the basis or cause for such impairment or degradation.

B. The Department and a county, city or town or any combination of counties, cities and towns comprising all or part of any geographic region identified pursuant to subsection A as contributing to the impairment or degradation of state waters may develop a cooperative program to address identified

nonpoint source pollution impairment or degradation, including excess nutrients. The program may include, in addition to other elements, a delineation of state and local government responsibilities and duties and may provide for the implementation of initiatives to address the causes of nonpoint source pollution, including those related to excess nutrients. These initiatives may include the modification, if necessary, of local government land use control ordinances. All state agencies shall cooperate and provide assistance in developing and implementing such programs.

C. The Department and a county, city or town or any combination of counties, cities and towns comprising all or part of any geographic region not identified pursuant to subsection A as contributing to the impairment or degradation of state waters may develop a cooperative program to prevent nonpoint source pollution impairment or degradation. The program may include, in addition to other elements, a delineation of state and local government responsibilities and duties and may provide for the implementation of initiatives to address the nonpoint source pollution causes, including the modification, if necessary, of local government land use control ordinances. All state agencies shall cooperate and provide assistance in developing and implementing such programs.

D. The Department shall, on or before January 1 of each year, report to the Governor and the General Assembly on whether cooperative nonpoint source pollution programs, including nutrient reduction programs, developed pursuant to this section are being effectively implemented to meet the objectives of this article. This annual report may be incorporated as part of the report required by § 62.1-44.118.

1997, cc. 21, 625, 626; 2003, c. 741; 2007, c. 637.

Article 4 - Virginia Water Quality Improvement Fund

§ 10.1-2127.1. Definitions.

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

"Fund" means the Virginia Water Quality Improvement Fund established by § 10.1-2128.

2019, c. 533.

§ 10.1-2128. Virginia Water Quality Improvement Fund established; purposes.

A. There is hereby established in the state treasury a special permanent, nonreverting fund, to be known as the "Virginia Water Quality Improvement Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of sums appropriated to it by the General Assembly which shall include, unless otherwise provided in the general appropriation act, 10 percent of the annual general fund revenue collections that are in excess of the official estimates in the general appropriation act and 10 percent of any unrestricted and uncommitted general fund balance at the close of each fiscal year whose reappropriation is not required in the general appropriation act. The Fund shall also consist of such other sums as may be made available to it from any other source, public or private, and shall include any penalties or damages collected under this article, federal grants solicited and received for the specific purposes of the Fund, and all interest and income from investment of the Fund. Any sums 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. All moneys designated for the Fund shall be paid into the state treasury and credited to the Fund. Moneys in the Fund shall be used solely for Water Quality Improvement Grants. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon the written request of the Director of the Department of Environmental Quality or the Director of the Department of Conservation and Recreation as provided in this chapter.

B. Except as otherwise provided under this article, the purpose of the Fund is to provide Water Quality Improvement Grants to local governments, soil and water conservation districts, state agencies, institutions of higher education and individuals for point and nonpoint source pollution prevention, reduction and control programs and efforts undertaken in accordance with the provisions of this chapter. The Fund shall not be used for agency operating expenses or for purposes of replacing or otherwise reducing any general, nongeneral, or special funds allocated or appropriated to any state agency; however, nothing in this section shall be construed to prevent the award of a Water Quality Improvement Grant to a local government in connection with point or nonpoint pollution prevention, reduction and control programs or efforts undertaken on land owned by the Commonwealth and leased to the local government. In keeping with the purpose for which the Fund is created, it shall be the policy of the General Assembly to provide annually its share of financial support to qualifying applicants for grants in order to fulfill the Commonwealth's responsibilities under Article XI of the Constitution of Virginia.

C. For the fiscal year beginning July 1, 2005, $50 million shall be appropriated from the general fund and deposited into the Fund. Except as otherwise provided under this article, such appropriation and any amounts appropriated to the Fund in subsequent years in addition to any amounts deposited to the Fund pursuant to the provisions of subsection A shall be used solely to finance the costs of design and installation of nutrient removal technology at publicly owned treatment works designated as significant dischargers or eligible nonsignificant dischargers for compliance with the effluent limitations for total nitrogen and total phosphorus of the Chesapeake Bay TMDL Watershed Implementation Plan or applicable regulatory or permit requirements. Notwithstanding the provisions of this section, the Governor and General Assembly may, at any time, provide additional funding for nonpoint source pollution reduction activities through the Fund in excess of the deposit required under subsection A.

At such time as grant agreements specified in § 10.1-2130 have been signed by every significant discharger and eligible nonsignificant discharger and available funds are sufficient to implement the provisions of such grant agreements, the House Committee on Agriculture, Chesapeake and Natural Resources, the House Committee on Appropriations, the Senate Committee on Agriculture, Conservation and Natural Resources, and the Senate Committee on Finance shall review the financial assistance provided under this section and determine (i) whether such deposits should continue to be made, (ii) the size of the deposit to be made, (iii) the programs and activities that should be financed by such deposits in the future, and (iv) whether the provisions of this section should be extended.

1997, cc. 21, 625, 626; 1999, c. 257; 2001, c. 264; 2005, cc. 704, 707, 709; 2006, c. 236; 2008, cc. 278, 500, 643, 701; 2010, c. 684; 2015, c. 164.

§ 10.1-2128.1. Virginia Natural Resources Commitment Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Natural Resources Commitment Fund hereafter referred to as "the Subfund," which shall be a subfund of the Virginia Water Quality Improvement Fund and administered by the Department of Conservation and Recreation. The Subfund shall be established on the books of the Comptroller. All amounts appropriated and such other funds as may be made available to the Subfund from any other source, public or private, shall be paid into the state treasury and credited to the Subfund. Interest earned on moneys in the Subfund shall remain in the Subfund and be credited to it. Any moneys remaining in the Subfund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Subfund. Moneys in the Subfund shall be used as provided in subsection B solely for the Virginia Agricultural Best Management Practices Cost-Share Program administered by the Department of Conservation and Recreation.

B. Beginning on July 1, 2008, and continuing in each subsequent fiscal year until July 1, 2018, out of such amounts as may be appropriated and deposited to the Subfund, distributions shall be made in each fiscal year for the following purposes:

1. Eight percent of the total amount distributed to the Virginia Agricultural Best Management Practices Cost-Share Program shall be distributed to soil and water conservation districts to provide technical assistance for the implementation of such agricultural best management practices. Each soil and water conservation district in the Commonwealth shall receive a share according to a method employed by the Director of the Department of Conservation and Recreation in consultation with the Virginia Soil and Water Conservation Board, that accounts for the percentage of the available agricultural best management practices funding that will be received by the district from the Subfund;

2. Fifty-five percent of the total amount distributed to the Virginia Agricultural Best Management Practices Cost-Share Program shall be used for matching grants for agricultural best management practices on lands in the Commonwealth exclusively or partly within the Chesapeake Bay watershed; and

3. Thirty-seven percent of the total amount distributed to the Virginia Agricultural Best Management Practices Cost-Share Program shall be used for matching grants for agricultural best management practices on lands in the Commonwealth exclusively outside of the Chesapeake Bay watershed.

C. The Department of Conservation and Recreation, in consultation with stakeholders, including representatives of the agricultural community, the conservation community, and the Soil and Water Conservation Districts, shall determine an annual funding amount for effective Soil and Water Conservation District technical assistance and implementation of agricultural best management practices pursuant to § 10.1-546.1. Pursuant to § 2.2-1504, the Department shall provide to the Governor the annual funding amount needed for each year of the ensuing biennial period. The Department shall include the annual funding amount as part of the reporting requirements in § 62.1-44.118.

2008, cc. 643, 701; 2009, cc. 209, 263; 2011, c. 245.

§ 10.1-2128.2. Nutrient Offset Fund; purposes.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Nutrient Offset Fund, referred to in this section as "the Subfund," which shall be a subfund of the Virginia Water Quality Improvement Fund and administered by the Director of the Department of Environmental Quality. The Subfund shall be established on the books of the Comptroller. All amounts appropriated and such other moneys as may be made available to the Subfund from any other source, public or private, shall be paid into the state treasury and credited to the Subfund. Interest earned on moneys in the Subfund shall remain in the Subfund and be credited to it. Any moneys remaining in the Subfund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Subfund. Moneys in the Subfund shall be used solely for the purposes stated in subsection B. Expenditures and disbursements from the Subfund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request of the Director of the Department of Environmental Quality.

B. The Director of the Department of Environmental Quality shall use moneys in the Subfund only to acquire nutrient credits or allocations from point or nonpoint sources that achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law or the Watershed Implementation Plan prepared for the Chesapeake Bay Total Maximum Daily Load pursuant to § 2.2-218. The Director of the Department of Environmental Quality may enter into long-term contracts with producers of nutrient credits to purchase such credits using moneys from the Subfund. Credits in the Subfund shall be listed in a registry maintained by the Department of Environmental Quality.

C. The Department of Environmental Quality shall establish a procedure to govern the distribution of moneys from the Subfund that shall include criteria that address (i) the annualized cost per pound of the reduction, (ii) the reliability of the underlying technology or practice, (iii) the relative durability and permanence of the credits generated, and (iv) other such factors that the Department deems appropriate to ensure that the practices will achieve the necessary reduction in nutrients for the term of credit.

D. The Director of the Department of Environmental Quality shall make nutrient credits acquired pursuant to subsection B available for sale to owners or operators of new or expanded facilities pursuant to § 62.1-44.19:15, and to permitted facilities pursuant to § 62.1-44.19:18. The Director shall consider recommendations of the Secretary of Commerce and Trade consistent with the requirements of the State Water Control Law (§ 62.1-44.2 et seq.) in the sale of nutrient credits to new or expanding private facilities.

E. For the purposes of this section, a "nutrient credit" means a nutrient reduction certified by the Department of Environmental Quality as a load allocation, point or nonpoint source nitrogen credit, or point or nonpoint source phosphorus credit under the Chesapeake Bay Watershed Nutrient Credit Exchange Program (§ 62.1-44.19:12 et seq.).

2011, c. 524; 2017, c. 540.

§ 10.1-2129. Agency coordination; conditions of grants.

A. If, in any fiscal year beginning on or after July 1, 2005, there are appropriations to the Fund in addition to those made pursuant to subsection A of § 10.1-2128, the Secretary of Natural Resources shall distribute those moneys in the Fund provided from the 10 percent of the annual general fund revenue collections that are in excess of the official estimates in the general appropriation act, and the 10 percent of any unrestricted and uncommitted general fund balance at the close of each fiscal year whose reappropriation is not required in the general appropriation act, as follows:

1. Seventy percent of the moneys shall be distributed to the Department of Conservation and Recreation and shall be administered by it for the sole purpose of implementing projects or best management practices that reduce nitrogen and phosphorus nonpoint source pollution, with a priority given to agricultural best management practices. In no single year shall more than 60 percent of the moneys be used for projects or practices exclusively within the Chesapeake Bay watershed; and

2. Thirty percent of the moneys shall be distributed to the Department of Environmental Quality, which shall use such moneys for making grants for the sole purpose of designing and installing nutrient removal technologies for publicly owned treatment works designated as significant dischargers or eligible nonsignificant dischargers. The moneys shall also be available for grants when the design and installation of nutrient removal technology utilizes the Public-Private Education Facilities and Infrastructure Act (§ 56-575.1 et seq.).

3. Except as otherwise provided in the Appropriation Act, in any fiscal year when moneys are not appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128, or when moneys appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128 are less than 40 percent of those specified in subsection A of § 10.1-2128, the Secretary of Natural Resources, in consultation with the Secretary of Agriculture and Forestry, the State Forester, the Commissioner of Agriculture and Consumer Services, and the Directors of the Departments of Environmental Quality and Conservation and Recreation, and with the advice and guidance of the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board, and the State Water Control Board, and following a public comment period of at least 30 days and a public hearing, shall allocate those moneys deposited in the Fund, but excluding any moneys deposited into the Virginia Natural Resources Commitment Fund established pursuant to § 10.1-2128.1, between point and nonpoint sources, both of which shall receive moneys in each such year.

B. 1. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural Resources, in consultation with the Secretary of Agriculture and Forestry, the State Forester, the Commissioner of Agriculture and Consumer Services, the State Health Commissioner, and the Directors of the Departments of Environmental Quality and Conservation and Recreation, and with the advice and guidance of the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board, and the State Water Control Board, shall develop written guidelines that (i) specify eligibility requirements; (ii) govern the application for and the distribution and conditions of Water Quality

Improvement Grants; (iii) list criteria for prioritizing funding requests; and (iv) define criteria and financial incentives for water reuse.

2. In developing the guidelines, the Secretary shall evaluate and consider, in addition to such other factors as may be appropriate to most effectively restore, protect and improve the quality of state waters: (i) specific practices and programs proposed in the Chesapeake Bay TMDL Watershed Implementation Plan, and the associated effectiveness and cost per pound of nutrients removed; (ii) water quality impairment or degradation caused by different types of nutrients released in different locations from different sources; and (iii) environmental benchmarks and indicators for achieving improved water quality. The process for development of guidelines pursuant to this subsection shall, at a minimum, include (a) use of an advisory committee composed of interested parties; (b) a 60-day public comment period on draft guidelines; (c) written responses to all comments received; and (d) notice of the availability of draft guidelines and final guidelines to all who request such notice.

3. In addition to those the Secretary deems advisable to most effectively restore, protect and improve the quality of state waters, the criteria for prioritizing funding requests shall include: (i) the pounds of total nitrogen and the pounds of total phosphorus reduced by the project; (ii) whether the location of the water quality restoration, protection or improvement project or program is within a watershed or subwatershed with documented water nutrient loading problems or adopted nutrient reduction goals; (iii) documented water quality impairment; and (iv) the availability of other funding mechanisms. Notwithstanding the provisions of subsection E of § 10.1-2131, the Director of the Department of Environmental Quality may approve a local government point source grant application request for any single project that exceeds the authorized grant amount outlined in subsection E of § 10.1-2131. Whenever a local government applies for a grant that exceeds the authorized grant amount outlined in this chapter or when there is no stated limitation on the amount of the grant for which an application is made, the Directors and the Secretary shall consider the comparative revenue capacity, revenue efforts and fiscal stress as reported by the Commission on Local Government. The development or implementation of cooperative programs developed pursuant to subsection B of § 10.1-2127 shall be given a high priority in the distribution of Virginia Water Quality Improvement Grants from the moneys allocated to nonpoint source pollution.

1997, cc. 21, 625, 626; 1999, c. 509; 2005, cc. 41, 704, 707, 709; 2006, c. 236; 2008, cc. 643, 701; 2010, c. 684; 2011, c. 189; 2012, cc. 785, 819; 2015, c. 164.

§ 10.1-2130. General provisions related to grants from the Fund.

All Water Quality Improvement Grants shall be governed by a legally binding and enforceable grant agreement between the recipient and the granting agency. In addition to provisions providing for payment of the total amount of the grant, the agreement shall, at a minimum, also contain provisions that govern design and installation and require proper long-term operation, monitoring and maintenance of funded projects, including design and performance criteria, as well as contractual or stipulated penalties in an amount sufficient to ensure compliance with the agreement, which may include repayment with interest, for any breach of the agreement, including failure to properly operate, monitor or

maintain. Grant agreements shall be made available for public review and comment for a period of no less than thirty days but no more than sixty days prior to execution. The granting agency shall cause notice of a proposed grant agreement to be given to all applicants for Water Quality Improvement Grants whose applications are then pending and to any person requesting such notice.

1997, cc. 21, 625, 626; 1999, c. 509.

§ 10.1-2131. Point source pollution funding; conditions for approval.

A. The Department of Environmental Quality (the Department) shall be the lead state agency for determining the appropriateness of any grant related to point source pollution to be made from the Fund to restore, protect, or improve state water quality.

B. The Director of the Department (the Director) shall, subject to available funds and in coordination with the Director of the Department of Conservation and Recreation, direct the State Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established pursuant to § 10.1-2129. The Director shall enter into grant agreements with all facilities designated as significant dischargers or eligible nonsignificant dischargers that apply for grants; however, all such grant agreements shall contain provisions that payments thereunder are subject to the availability of funds.

C. Notwithstanding the priority provisions of § 10.1-2129, the Director shall not authorize the distribution of grants from the Fund for purposes other than financing the cost of design and installation of nutrient removal technology at publicly owned treatment works in the Chesapeake Bay watershed until such time as nutrient reductions of regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan are satisfied, unless he finds that there exists in the Fund sufficient funds for substantial and continuing progress in implementation of the reductions established in accordance with regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan within the Chesapeake Bay watershed.

In addition to the provisions of § 10.1-2130, all grant agreements related to nutrients shall include: (i) numerical technology-based effluent concentration limitations on nutrient discharges to state waters based upon the technology installed by the facility; (ii) enforceable provisions related to the maintenance of the numerical concentrations that will allow for exceedances of 0.8 mg/L for total nitrogen or no more than 10 percent, whichever is greater, for exceedances of 0.1 mg/L for total phosphorus or no more than 10%, and for exceedances caused by extraordinary conditions; and (iii) recognition of the authority of the Commonwealth to make the Virginia Water Facilities Revolving Fund (§ 62.1-224 et seq.) available to local governments to fund their share of the cost of designing and installing nutrient removal technology based on financial need and subject to availability of revolving loan funds, priority ranking, and revolving loan distribution criteria.

If, pursuant to § 10.1-1187.6, the State Water Control Board approves an alternative compliance method to technology-based concentration limitations in Virginia Pollutant Discharge Elimination System permits, the concentration limitations of the grant agreement shall be suspended subject to the terms of such approval. The cost of the design and installation of nutrient removal technology at

publicly owned treatment works meeting the nutrient reductions of regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan and incurred prior to the execution of a grant agreement is eligible for reimbursement from the Fund if the grant is made pursuant to an executed agreement consistent with the provisions of this chapter.

Subsequent to the implementation of any applicable regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan, the Director may authorize disbursements from the Fund for any water quality restoration, protection, and improvements related to point source pollution that are clearly demonstrated as likely to achieve measurable and specific water quality improvements, including cost effective technologies to reduce loads of total phosphorus, total nitrogen, or nitrogen-containing ammonia in order to meet the requirements of regulations associated with the reduction of ammonia that have not yet been adopted and that are more stringent than regulations adopted by the State Water Control Board as of January 1, 2018. Notwithstanding any provision of this subsection, the Director may, at any time, authorize grants, including grants to institutions of higher education, for technical assistance related to nutrient reduction.

Notwithstanding any other provision of this chapter, the Director may at any time authorize grants for the design and installation of wastewater conveyance infrastructure that (a) diverts wastewater from one publicly owned treatment works that is eligible for grant funding under this chapter to another publicly owned treatment works that also is eligible for such funding; (b) diverts wastewater to a receiving treatment works that is capable of achieving compliance with its nutrient reduction or ammonia control discharge requirements and results in a net reduction in total phosphorus, total nitrogen, or nitrogen-containing ammonia discharges; and (c) results in a Water Quality Improvement Grant expense being incurred by the Department that is the same as or lower than the grant expense the Department would incur in funding design and installation of eligible nutrient removal or other applicable treatment technology at such treatment works that would have treated the wastewater in the absence of the diversion project.

D. The grant percentage provided for financing the costs of the design and installation of nutrient removal technology at publicly owned treatment works shall be based upon the financial need of the community as determined by comparing the annual sewer charges expended within the service area to the reasonable sewer cost established for the community.

E. Grants shall be awarded in the following manner:

1. In communities for which the ratio of annual sewer charges to reasonable sewer cost is less than 0.30, the Director shall authorize grants in the amount of 35 percent of the costs of the design and installation of nutrient removal technology;

2. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or greater than 0.30 and less than 0.50, the Director shall authorize grants in the amount of 45 percent of the costs of the design and installation of nutrient removal technology;

3. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or greater than 0.50 and less than 0.80, the Director shall authorize grants in the amount of 60 percent of the costs of design and installation of nutrient removal technology; and

4. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or greater than 0.80, the Director shall authorize grants in the amount of 75 percent of the costs of the design and installation of nutrient removal technology.

1997, cc. 21, 625, 626; 1999, cc. 257, 509; 2005, cc. 704, 707, 709; 2006, c. 236; 2015, c. 164; 2018, cc. 609, 610; 2019, c. 533.

§ 10.1-2132. Nonpoint source pollution funding; conditions for approval.

A. The Department of Conservation and Recreation shall be the lead state agency for determining the appropriateness of any grant related to nonpoint source pollution to be made from the Fund to restore, protect and improve the quality of state waters.

B. The Director of the Department of Conservation and Recreation shall, subject to available funds and in coordination with the Director of the Department of Environmental Quality, direct the State Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established pursuant to § 10.1-2129. The Director shall manage the allocation of grants from the Fund to ensure the full funding of executed grant agreements.

C. Grant funding may be made available to local governments, soil and water conservation districts, institutions of higher education and individuals who propose specific initiatives that are clearly demonstrated as likely to achieve reductions in nonpoint source pollution, including, but not limited to, excess nutrients and suspended solids, to improve the quality of state waters. Such projects may include, but are in no way limited to, the acquisition of conservation easements related to the protection of water quality and stream buffers; conservation planning and design assistance to develop nutrient management plans for agricultural operations; instructional education directly associated with the implementation or maintenance of a specific nonpoint source pollution reduction initiative; the replacement or modification of residential onsite sewage systems to include nitrogen removal capabilities; implementation of cost-effective nutrient reduction practices; and reimbursement to local governments for tax credits and other kinds of authorized local tax relief that provides incentives for water quality improvement. The Director shall give priority consideration to the distribution of grants from the Fund for the purposes of implementing any applicable regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan, with a priority given to agricultural practices. In no single year shall more than 60 percent of the moneys be used for projects or practices exclusively within the Chesapeake Bay watershed.

D. The Director of the Department of Conservation and Recreation shall manage the allocation of Water Quality Improvement Grants from the Virginia Natural Resources Commitment Fund established under § 10.1-2128.1.

1997, cc. 21, 625, 626; 1999, cc. 257, 509, 549; 2005, cc. 704, 707, 709; 2008, cc. 643, 701; 2009, c. 695; 2015, c. 164.

§ 10.1-2133. Annual report by State Comptroller.

The State Comptroller shall, by January 1 of each year, certify to the chairmen of the House Committee on Appropriations and the Senate Committee on Finance, the total amount of annual general fund revenue collections in excess of the official estimate in the general appropriation act, the total amount of the unrestricted and uncommitted general fund balance whose reappropriation is not required in the general appropriation act at the close of the previous fiscal year and the total amount of funds that are to be directed to the credit of the Virginia Water Quality Improvement Fund under this article unless otherwise provided in the general appropriation act.

1997, cc. 21, 625, 626; 2010, c. 684.

§ 10.1-2134. Annual report by Directors of the Departments of Environmental Quality and Conservation and Recreation.

The Directors of the Departments of Environmental Quality and Conservation and Recreation shall, by January 1 of each year, report to the Governor and the General Assembly the amounts and recipients of grants made from the Virginia Water Quality Improvement Fund and the specific and measurable pollution reduction achievements to state waters anticipated as a result of each grant award, together with the amounts of continued funding required for the coming fiscal year under all fully executed grant agreements. The report shall provide a detailed progress update on the implementation of agricultural best management practices to reduce nitrogen and phosphorous pollution from agricultural lands. This annual report may be incorporated as part of the report required by § 62.1-44.118.

1997, cc. 21, 625, 626; 2007, c. 637; 2008, cc. 643, 701.

§ 10.1-2134.1. Water Quality Improvement Fund; estimate of requests.

The Department of Environmental Quality (the Department), in consultation with stakeholders, including representatives of the Virginia Association of Municipal Wastewater Agencies, local governments, and conservation organizations, shall annually determine an estimate of the amount of Water Quality Improvement Grant funding expected to be requested by local governments for projects that are related to point source pollution and are eligible for grant funding pursuant to the provisions of this chapter. The Department shall include such estimate in (i) the biennial funding report that is submitted to the Governor pursuant to the provisions of § 2.2-1504 and (ii) the annual progress report on the impaired waters clean-up plan that is submitted to legislative committees pursuant to the provisions of § 62.1-44.118.

2019, c. 533.

Chapter 21.2 - FOUNDATION FOR VIRGINIA'S NATURAL RESOURCES

§§ 10.1-2135 through 10.1-2140. Repealed.

Repealed by Acts 2012, cc. 803 and 835, cl. 98.

Subtitle III - ACTIVITIES ADMINISTERED BY THE DEPARTMENT OF HISTORIC RESOURCES

Chapter 22 - HISTORIC RESOURCES

Article 1 - DEPARTMENT OF HISTORIC RESOURCES

§ 10.1-2200. Definitions.

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

"Battlefield property" means any real property in the Commonwealth that is listed in the Report on the Nation's Civil War Battlefields by the Civil War Sites Advisory Commission (Civil War Sites Advisory Commission/National Park Service, 1993, as amended); the Report to Congress on the Historic Preservation of Revolutionary War and War of 1812 Sites in the United States by the American Battlefield Protection Program of the National Park Service (U.S. Department of the Interior/National Park Service, 2007, as amended or superseded); or the Update to the Civil War Sites Advisory Commission Report on the Nation's Civil War Battlefields, Commonwealth of Virginia, by the American Battlefield Protection Program (U.S. Department of the Interior/National Park Service, 2009, as amended or superseded).

"Board" means the Board of Historic Resources.

"Department" means the Department of Historic Resources.

"Director" means the Director of the Department of Historic Resources.

1989, c. 656; 2015, c. 100.

§ 10.1-2201. Department created; appointment of Director; Director to serve as State Historic Preservation Officer.

There is hereby created a Department of Historic Resources. The Department shall be headed by a Director.

The Director shall be appointed by the Governor to serve at his pleasure for a term coincident with his own. The Director shall be subject to confirmation by the General Assembly if it is in session when the appointment is made, and if not then in session, at the next succeeding session.

The Director shall also serve as the State Historic Preservation Officer for the purposes of carrying out the National Historic Preservation Act of 1966 (P.L. 89-665), as amended.

1989, c. 656.

§ 10.1-2202. Powers and duties of the Director.

In addition to the powers and duties conferred upon the Director elsewhere and in order to encourage, stimulate, and support the identification, evaluation, protection, preservation, and rehabilitation of the Commonwealth's significant historic, architectural, archaeological, and cultural resources; in order to establish and maintain a permanent record of those resources; and in order to foster a greater

appreciation of these resources among the citizens of the Commonwealth, the Director shall have the following powers and duties which may be delegated by the Director:

1. To employ such personnel as may be required to carry out those duties conferred by law;

2. To make and enter into all contracts and agreements necessary or incidental to the performance of his duties and the execution of his powers, including but not limited to contracts with private nonprofit organizations, the United States, other state agencies and political subdivisions of the Commonwealth;

3. To apply for and accept bequests, grants and gifts of real and personal property as well as endowments, funds, and grants from the United States government, its agencies and instrumentalities, and any other source. The Director shall have the authority to comply with such conditions and execute such agreements as may be necessary, convenient or desirable;

4. To perform acts necessary or convenient to carry out the duties conferred by law;

5. To promulgate regulations, in accordance with the Virginia Administrative Process Act (§ 2.2-4000 et seq.) and not inconsistent with the National Historic Preservation Act (P.L. 89-665) and its attendant regulations, as are necessary to carry out all responsibilities incumbent upon the State Historic Preservation Officer, including at a minimum criteria and procedures for submitting nominations of properties to the National Park Service for inclusion in the National Register of Historic Places or for designation as National Historic Landmarks;

6. To conduct a broad survey and to maintain an inventory of buildings, structures, districts, objects, and sites of historic, architectural, archaeological, or cultural interest which constitute the tangible remains of the Commonwealth's cultural, political, economic, military, or social history;

7. To publish lists of properties, including buildings, structures, districts, objects, and sites, designated as landmarks by the Board, to inspect designated properties from time to time, and periodically publish a complete register of designated properties setting forth appropriate information concerning those properties;

8. With the consent of the landowners, to provide appropriately designed markers for designated buildings, structures, districts, objects and sites;

9. To acquire and to administer battlefield properties and designated landmarks, or easements or interests therein;

10. To aid and to encourage counties, cities and towns to establish historic zoning districts for designated landmarks and to adopt regulations for the preservation of historical, architectural, archaeological, or cultural values;

11. To provide technical advice and assistance to individuals, groups and governments conducting historic preservation programs and regularly to seek advice from the same on the effectiveness of Department programs;

12. To prepare and place, in cooperation with the Department of Transportation, highway historical markers approved by the Board of Historic Resources on or along the highway or street closest to the location which is intended to be identified by the marker;

13. To develop a procedure for the certification of historic districts and structures within the historic districts for federal income tax purposes;

14. To aid and to encourage counties, cities, and towns in the establishment of educational programs and materials for school use on the importance of Virginia's historic, architectural, archaeological, and cultural resources;

15. To conduct a program of archaeological research with the assistance of the State Archaeologist which includes excavation of significant sites, acquisition and maintenance of artifact collections for the purposes of study and display, and dissemination of data and information derived from the study of sites and collections;

16. To manage and administer the Historic Resources Fund as provided in § 10.1-2202.1; and

17. To manage and administer the Historical African American Cemeteries and Graves Fund as provided in § 10.1-2211.3.

1989, c. 656; 1992, cc. 256, 801; 1995, c. 21; 2005, c. 85; 2006, c. 32; 2015, c. 100; 2020, cc. 455, 456.

§ 10.1-2202.1. Historic Resources Fund established; administration; purpose.

A. There is hereby established a special, nonreverting fund in the state treasury to be known as the Historic Resources Fund, hereafter referred to as the Fund. The Fund shall be administered and managed by the Director and used for the general purposes of education, financing of museum operating and capital expenses, performing research, and conducting special historic preservation projects as identified by the Department and the donors. The Fund shall consist of appropriations from the General Assembly designated for the Fund, any gifts and bequests, cash and noncash, and all proceeds from the sale of Department publications and educational or promotional material, income from contracted services, and grants. Initial funding shall be made by a transfer of existing donations and special funds consistent with the intent of this new fund.

B. The Fund shall be established on the books of the State Comptroller. Any moneys remaining in the Fund shall not revert to the general fund but shall remain in the Fund. Interest earned on such moneys shall remain in the Fund and be credited to it. Any income earned from gifts, bequests, securities, and other property shall be deposited to the credit of the Fund.

1995, c. 21.

§ 10.1-2202.2. Preservation Easement Fund established; uses.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Preservation Easement Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of general funds appropriated by the General

Assembly and funds received as gifts, endowments, or grants from the United States Government, its agencies and instrumentalities, and funds from any other available sources, public or private. All such funds 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: (i) supporting and promoting a broad-based easement program and (ii) providing grants in accordance with this section to persons who convey a perpetual easement to the Board pursuant to the Open-Space Land Act (§ 10.1-1700 et seq.) and, if applicable, the Virginia Conservation Easement Act (§ 10.1-1009 et seq.) for the purposes of preserving real property which is important for its historical, architectural or archaeological aspects. 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.

B. The Director shall establish, administer, manage, and make expenditures and allocations from the Fund.

C. Grants from the Fund may be made to persons conveying a perpetual easement to the Board to pay some or all of the costs associated with such conveyance, which may include the cost of registering the property with the Virginia Landmarks Register and the National Register of Historic Places, and legal, survey, appraisal and other costs.

D. The Director shall establish guidelines for the submittal and evaluation of grant applications and for the award of grants from the Fund. The guidelines shall authorize the Director to give priority to applications that demonstrate the applicant's financial need for a grant.

1998, c. 479.

§ 10.1-2202.3. Stewardship of state-owned historic properties.

A. In order to consider the broad public interest and protect the financial investment in state-owned historic assets, the Department shall develop, on a biennial basis, a report on the stewardship of state-owned properties. The report shall include, but not be limited to, a priority list of the Commonwealth's most significant state-owned properties that are eligible for but not designated on the Virginia Landmarks Register pursuant to § 10.1-2206.1. The report shall also provide a priority list of significant state-owned properties, designated on or eligible for the Virginia Landmarks Register, which are threatened with the loss of historic integrity or functionality. In developing the report, the Department shall, in addition to significance and threat, take into account other public interest considerations associated with landmark designation and the provision of proper care and maintenance of property. These considerations shall include: (i) potential financial consequences to the Commonwealth associated with failure to care for and maintain property, (ii) significant public educational potential, (iii) significant tourism opportunities, and (iv) community values and comments. The report shall be forwarded to all affected state agencies, including institutions of higher education, the Governor, the

Secretary of Administration, the Secretary of Natural Resources, the Secretary of Finance, and the General Assembly. All agencies of the Commonwealth shall assist and support the development of the report by providing information and access to property as may be requested.

B. Each agency that owns property included in the report required by subsection A shall initiate consultation with the Department within 60 days of receipt of the report and make a good faith effort to reach a consensus decision on designation of an unlisted property and on the feasibility, advisability, and general manner of addressing property needs in the case of a threatened historic property.

C. The Department shall prepare a biennial status report summarizing actions, decisions taken, and the condition of properties previously identified as priorities. The status report, which may be combined with the report required pursuant to subsection A, shall be forwarded to all affected state agencies, including institutions of higher education, as well as to the Governor, the Secretary of Administration, the Secretary of Natural Resources, the Secretary of Finance, and the General Assembly.

D. The reports required in subsections A and C shall be completed and distributed as required no later than May 1 of each odd-numbered year, so that information contained therein is available to the agencies, the Secretary of Finance, the Secretary of Administration, and the Governor, as well as the General Assembly, during budget preparation.

2006, c. 747.

§ 10.1-2202.4. Virginia Battlefield Preservation Fund established; eligibility; uses.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Battlefield Preservation Fund, hereafter referred to as "the Fund." The Fund shall be established on the books of the Comptroller. The Fund shall consist of general funds appropriated by the General Assembly and funds received as gifts, endowments, or grants from the United States government, its agencies and instrumentalities, and funds from any other available sources, public or private, including gifts and bequeaths. All such funds 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 by the Department solely for the purpose of making grants to private nonprofit organizations, hereafter referred to as "organizations," to match federal and other matching funds. All such grants shall be made solely for the fee simple purchase of, or purchase of protective interests in, any Virginia battlefield property listed in the following reports: the Report on the Nation's Civil War Battlefields by the Civil War Sites Advisory Commission (Civil War Sites Advisory Commission/National Park Service, 1993, as amended) or the Report to Congress on the Historic Preservation of Revolutionary War and War of 1812 Sites in the United States by the American Battlefield Protection Program of the National Park Service (U.S. Department of the Interior/National Park Service, 2007, as amended or superseded). 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.

B. The Director shall establish, administer, manage, and make expenditures and allocations from the Fund.

C. Organizations seeking grant funding from the Fund shall be required to provide at least $1 in matching funds for each $1 received from the Fund for the proposed project. As used herein, the term "matching funds" shall include both cash and the value of any contribution due to a bargain sale or the donation of land or interest therein made by the landowner as part of the proposed project. No state funds may be included in determining the amount of the match.

D. Eligible costs for which moneys from the Fund may be allocated include acquisition of land and any improvements thereon (collectively referred to herein as "land") or permanent protective interests, such as perpetual conservation easements, and costs associated with such acquisitions, including the cost of appraisals, environmental reports, any survey, title searches and title insurance, and other closing costs.

E. Grants from the Fund shall not exceed 50 percent of the appraised value of the land or permanent protective interest therein.

F. Grants from the Fund may be awarded for prospective purchases or for acquisitions on which the applicant has closed. In the latter case the applicant shall demonstrate:

1. The closing occurred no more than 12 months prior to the date of application for the grant; and

2. An identifiable threat to the resource or compelling need for preservation existed at the time of the purchase.

G. Any eligible organization making an acquisition of land or interest therein pursuant to this section shall grant to the Board or other holder a perpetual easement placing restrictions on the use or development of the land. In cases where the easement is granted to a holder other than the Board, all terms and conditions of the easement shall be reviewed by and found by the Department to accomplish the perpetual preservation of the battlefield property. Such other holder shall demonstrate to the Department that it has the capacity and expertise to manage and enforce the terms of the easement.

H. Nothing in this section shall preclude the subsequent transfer or assignment by a state agency or other owner or holder of any property interest acquired pursuant to this section to the United States of America to be incorporated into a national park, national forest, national wildlife refuge, or other national conservation area in accordance with 54 U.S.C. § 100101, 16 U.S.C. § 551, the Fish and Wildlife Act of 1956 (16 U.S.C. § 742a et seq.), or 16 U.S.C. § 1131, as amended and applicable. The Department, acting on behalf of the Board, shall facilitate transfers and assignments of any such interests held by the Board. The United States of America shall be considered a "public body" as that term is defined in the Virginia Open-Space Land Act (§ 10.1-1700 et seq.) for the purposes of any transfer or assignment to the United States of America of any easement granted under this section.

I. The Director shall establish, administer, manage, and make expenditures and allocations from the Fund and shall establish guidelines for applications, evaluation, and award of grants from the Fund in consultation with appropriate battlefield preservation interests. In making grants, the Department shall give primary consideration to the significance of the battlefield and the degree to which the property falls within the core and study areas of the specific battlefield, as described in the relevant report of the American Battlefield Protection Program, as well as proximity to other protected lands; threat to and integrity of the features associated with the battle in question; and the financial and administrative capacity of the applicant to complete the project and to maintain and manage the property in a manner that is consistent with the public investment and public interests, such as education, recreation, research, heritage tourism promotion, or orderly community development.

2010, cc. 237, 479; 2015, c. 467.

§ 10.1-2203. Board of Historic Resources membership; appointment; terms.

A. The Virginia Historic Landmarks Board within the executive branch of state government is continued as the Board of Historic Resources and shall consist of seven members. The members of the Board shall initially be appointed for terms of office as follows: two for a one-year term, two for a two-year term, two for a three-year term, and one for a four-year term. Appointments thereafter shall be made for four-year terms, except appointments to fill vacancies occurring other than by expiration of term, which shall be filled for the unexpired term.

B. In making appointments to the Board, the Governor shall consult with agencies and organizations in Virginia that have as their principal interest the study of Virginia's history and the preservation of Virginia's historic, architectural, archaeological, and cultural resources. The Governor shall also consult appropriate agencies and organizations that represent business and property interests that may be affected by actions of the Board.

1966, c. 632, § 10-136; 1968, c. 612; 1976, c. 484; 1984, c. 750; 1986, c. 608; 1988, c. 891, § 10.1-800; 1989, c. 656; 1992, c. 801.

§ 10.1-2204. Duties of Board of Historic Resources.

A. The Board of Historic Resources shall:

1. Designate historic landmarks, including buildings, structures, districts, objects and sites which constitute the principal historical, architectural, archaeological, and cultural resources which are of local, statewide or national significance and withdraw designation either upon a determination by the Board that the property has failed to retain those characteristics for which it was designated or upon presentation of new or additional information proving to the satisfaction of the Board that the designation had been based on error of fact;

2. Establish and endorse appropriate historic preservation practices for the care and management of designated landmarks;

3. Approve the proposed text and authorize the manufacture of highway historical markers;

4. Acquire by purchase or gift battlefield properties and designated landmarks, or easements or interests therein;

5. Review the programs and services of the Department of Historic Resources, including annual plans and make recommendations to the Director and the Governor concerning the effectiveness of those programs and services;

6. In cooperation with the Department, and through public lectures, writings, and other educational activities, promote awareness of the importance of historic resources and the benefits of their preservation and use; and

7. Apply for gifts, grants and bequests for deposit in the Historic Resources Fund to promote the missions of the Board and the Department.

B. For the purposes of this chapter, designation by the Board of Historic Resources shall mean an act of official recognition designed (i) to educate the public to the significance of the designated resource and (ii) to encourage local governments and property owners to take the designated property's historic, architectural, archaeological, and cultural significance into account in their planning, the local government comprehensive plan, and their decision making. Such designation, itself, shall not regulate the action of local governments or property owners with regard to the designated property.

1966, c. 632, § 10-138; 1984, c. 750, § 10-259; 1986, c. 608; 1988, c. 891, § 10.1-801; 1989, c. 656; 1992, c. 801; 1995, c. 21; 2006, c. 32; 2015, c. 100.

§ 10.1-2205. Board shall promulgate regulations; penalty.

The Board shall promulgate regulations necessary to carry out its powers and duties, including at a minimum criteria and procedures for the designation of historic landmarks, including buildings, structures, districts, objects, and sites. Such regulations shall be not inconsistent with the National Historic Preservation Act (P.L. 89-665) and its attendant regulations. The regulations of the Board shall be promulgated in accordance with the Virginia Administrative Process Act (§ 2.2-4000 et seq.).

Any person who violates any regulation adopted pursuant to this section shall be subject to a civil penalty not to exceed $500. Any civil penalty collected pursuant to this section shall be deposited into the state treasury.

1989, c. 656; 1992, cc. 180, 801; 2006, c. 32.

§ 10.1-2206. Repealed.

Repealed by Acts 1992, c. 801.

§ 10.1-2206.1. Procedure for designating a historic district, building, structure, or site as a historic landmark; National Register of Historic Places, National Historic Landmarks; historic district defined.

A. In any county, city, or town where the Board proposes to designate a historic district, building, structure, object, or site as a historic landmark, or where the Director proposes to nominate property to the National Park Service for inclusion in the National Register of Historic Places or for designation as a

National Historic Landmark, the Department shall give written notice of the proposal to the governing body and to the owner, owners, or the owner's agent, of property proposed to be so designated or nominated, and to the owners, or their agents, of all abutting property and property immediately across the street or road from the property.

B. Prior to the designation or nomination of a historic district, the Department shall hold a public hearing at the seat of government of the county, city, or town in which the proposed historic district is located or within the proposed historic district. The public hearing shall be for the purpose of supplying additional information to the Board and to the Director. The time and place of such hearing shall be determined in consultation with a duly authorized representative of the local governing body, and shall be scheduled at a time and place that will reasonably allow for the attendance of the affected property owners. The Department shall publish notice of the public hearing once a week for two successive weeks in a newspaper published or having general circulation in the county, city, or town. Such notice shall specify the time and place of the public hearing at which persons affected may appear and present their views, not less than six days nor more than twenty-one days after the second publication of the notice in such newspaper. In addition to publishing the notice, the Department shall give written notice of the public hearing at least five days before such hearing to the owner, owners, or the owner's agent, of each parcel of real property to be included in the proposed historic district, and to the owners, or their agents, of all abutting property and property immediately across the street or road from the included property. Notice required to be given to owners by this subsection may be given concurrently with the notice required to be given to the owners by subsection A. The Department shall make and maintain an appropriate record of all public hearings held pursuant to this section.

C. Any written notice required to be given by the Department to any person shall be deemed to comply with the requirements of this section if sent by first class mail to the last known address of such person as shown on the current real estate tax assessment books, provided that a representative of the Department shall make an affidavit that such mailings have been made.

D. The local governing body and property owners shall have thirty days from the date of the notice required by subsection A, or, in the case of a historic district, thirty days from the date of the public hearing required by subsection B to provide comments and recommendations, if any, to the Board and to the Director.

E. For the purposes of this chapter, a historic district means a geographically definable area which contains a significant concentration of historic buildings, structures or sites having a common historical, architectural, archaeological, or cultural heritage, and which may contain local tax parcels having separate owners. Contributing properties within a registered district are historic landmarks by definition.

F. All regulations promulgated by the Director pursuant to § 10.1-2202 and all regulations promulgated by the Board pursuant to § 10.1-2205 shall be consistent with the provisions of this section.

1992, c. 801; 2006, c. 32.

§ 10.1-2206.2. Consent of owners required for certain designations by the Board.

A. Before the Board shall designate any building, structure, district, object, or site as a historic landmark in accordance with § 10.1-2204, the owners of such property proposed for designation shall be given the opportunity to concur in or object to such designation by the Board. If a majority of the owners of the property within such area proposed for designation object to such designation, the Board shall take no formal action to designate the property as historic until such objection is withdrawn.

B. For the purposes of this section, majority of owners of the property shall mean a majority of the number of property owners of or within the proposed property or district.

C. Nothing contained herein shall be deemed or construed to affect any local government charter or ordinance regarding historic districts or historic preservation.

1992, c. 801; 2006, c. 32.

§ 10.1-2207. Property to reflect change in market value.

Where the Commonwealth has obtained from a landowner an easement or other partial interest in property which places restrictions on the use or development of that property so as to preserve those features which led to the designation of that property as an historic landmark, the easement or other partial interest shall be recorded in the clerk's office of the county or city where deeds are admitted to record. Assessments for local taxation of the property shall reflect any resulting change in the market value of the property, as prescribed by § 58.1-3205. The Director shall notify the official having the taxing power to make assessments of properties for purposes of taxation within the locality of the restrictions that have been placed on the property.

1966, c. 632, §§ 10-138, 10-139; 1984, cc. 675, 750; 1986, c. 608; 1988, c. 891, § 10.1-808; 1989, c. 656.

§ 10.1-2208. Supervision of expenditure of appropriations made to localities and private organizations.

The Director shall oversee the expenditure of state appropriations made available to organizations, whether localities or private entities, for purposes related to the historical collections, historic landmarks, and historic sites of Virginia, to assure that such purposes are consistent with the statewide plan for historic preservation as established by the Director. The Director shall establish and require adherence to sound professional standards of historical, architectural and archaeological research in the planning, preservation, restoration, interpretation and display of such collections, landmarks, and sites.

1972, c. 119, § 10-138.1; 1984, c. 750; 1988, c. 891, § 10.1-809; 1989, c. 656; 2010, c. 291.

§§ 10.1-2208.1, 10.1-2208.2. Expired.

Expired.

§ 10.1-2209. Erection of markers, requirements, etc., without certificate of approval forbidden.

It shall be unlawful to post or erect any historical marker, monument, sign or notice, on public property or upon any public street, road or highway in the Commonwealth bearing any legend, inscription or notice which purports to record any historic event, incident or fact, or to maintain any such historical marker, monument, notice, or sign posted or erected after June 17, 1930, unless a written certificate has been issued by the Board or an appropriate predecessor agency attesting to the validity and correct record of the historic event, incident or fact set forth in the marker.

Code 1950, § 42-66; 1950, p. 47; 1964, c. 152; 1970, c. 606, § 10-145.2; 1976, c. 88; 1984, c. 750, § 10-261; 1986, c. 608; 1988, c. 891, § 10.1-810; 1989, c. 656.

§ 10.1-2210. Erection of markers by local governing bodies.

A. The governing body of any county, city or town may, at its own expense, have erected a historical marker commemorating any person, event or place upon any public street, road or highway within its boundaries, provided that the person, event or place to be commemorated is identified with or representative of a local aspect of history. The governing body, or its duly authorized agent, shall first determine, on the basis of documented research, that the text of the marker appears to be true and correct. The local markers shall differ in style and appearance from state historical markers, and shall display, on the face of the markers, prominent notice of the governing body, or its agent, which approved the text of the marker. Design, appearance and size and height specifications for local markers shall be reviewed and approved by the Board.

B. If the person, event or place to be commemorated is prominently identified with, or best representative of a major aspect of state or national history, then the text of the marker shall be approved as provided in § 10.1-2209.

1970, c. 606, § 10-145.6; 1976, c. 88; 1988, c. 891, § 10.1-811; 1989, c. 656.

§ 10.1-2211. Disbursement of funds appropriated for caring for Confederate cemeteries and graves.

A. At the direction of the Director, the Comptroller of the Commonwealth is instructed and empowered to draw annual warrants upon the State Treasurer from any sums that may be provided in the general appropriation act, in favor of the treasurers of the Confederate memorial associations and chapters of the United Daughters of the Confederacy set forth in subsection B of this section. Such sums shall be expended by the associations and organizations for the routine maintenance of their respective Confederate cemeteries and graves and for the graves of Confederate soldiers and sailors not otherwise cared for in other cemeteries, and in erecting and caring for markers, memorials, and monuments to the memory of such soldiers and sailors. All such associations and organizations, through their proper officers, are required after July 1 of each year to submit to the Director a certified statement that the funds appropriated to the association or organization in the preceding fiscal year were or will be expended for the routine maintenance of cemeteries specified in this section and the graves of Confederate soldiers and sailors and in erecting and caring for markers, memorials and monuments to the memory of such soldiers and sailors. An association or organization failing to comply with any of the

requirements of this section shall be prohibited from receiving moneys allocated under this section for all subsequent fiscal years until the association or organization fully complies with the requirements.

B. Allocation of appropriations made pursuant to this section shall be based on the number of graves, monuments and markers as set forth opposite the association's or organization's name, or as documented by each association or organization multiplied by the rate of $5 or the average actual cost of routine maintenance, whichever is greater, for each grave, monument or marker in the care of a Confederate memorial association or chapter of the United Daughters of the Confederacy. For the purposes of this section the "average actual cost of care" shall be determined by the Department in a biennial survey of at least four properly maintained cemeteries, each located in a different geographical region of the Commonwealth.

a	IN THE COUNTIES OF:	NUMBER:
b	Accomack	
c	Robert E. Lee Chapter, U.D.C., Belle Haven	10
d	Albemarle	
e	Albemarle Chapter, U.D.C.	50
f	Mountain Plain Cemetery, Crozet	15
g	Mt. Zion United Methodist Church, Esmont	10
h	Scottsville Chapter, U.D.C.	40
i	Westerly Chapel Cemetery, Free Union	15
j	Amelia	
k	Grub Hill Church	10
l	Appomattox	
m	Appomattox Chapter, U.D.C.	50
n	Augusta	
o	Augusta Stone Presbyterian Church Cemetery	40
p	Salem Lutheran Church Cemetery	37
q	Trinity Lutheran Church Cemetery	13
r	Botetourt	
s	Fairview Cemetery Association, Inc.	20
t	Glade Creek Cemetery Corporation	10
u	Buchanan	
v	Ratliff	30
w	Carroll	
x	Floyd Webb Cemetery	16
y	Robinson Cemetery	10
z	Worrell Cemetery	10
aa	Charles City County	

ab	Salem Church Cemetery	35
ac	Chesterfield	
ad	Ettrick Cemetery	47
ae	Skinquarter Baptist Church Cemetery	15
af	Craig	
ag	Archibald A. Caldwell Cemetery	4
ah	Culpeper	
ai	Culpeper Chapter, U.D.C.	10
aj	Dinwiddie	
ak	Dinwiddie Confederate Memorial Association	15
al	Fairfax	
am	Fairfax Chapter, U.D.C.	15
an	Robert E. Lee Chapter No. 56	36
ao	Fauquier	
ap	Black Horse Chapter, U.D.C.	10
aq	Marshall Cemetery	10
ar	Piedmont Chapter, U.D.C.	10
as	Upperville Methodist Church Cemetery	10
at	Floyd	
au	Floyd County Confederate Memorial Association	20
av	Southward Cemetery	10
aw	Giles	
ax	McComas Chapter, U.D.C.	15
ay	Goochland	
az	Goochland Chapter, U.D.C.	15
ba	Grayson	
bb	A. B. Cox Cemetery	10
bc	Atkins Memorial Cemetery	10
bd	Bethel Church Cemetery	10
be	Bridlecreek Cemetery	10
bf	Camet B. Cox Cemetery	10
bg	Comer's Rock Cemetery	10
bh	Cox's Chapel	10
bi	Fellowship Baptist Cemetery	10
bj	Fries Ridge Cemetery	10
bk	Forest Cemetery	10
bl	Fox Creek Cemetery	10

bm	Funk Cemetery	10
bn	Gold Hill Cemetery	10
bo	Grubbs Chapel Cemetery	10
bp	Hale Cemetery	15
bq	Hines Branch Cemetery	10
br	Independence Cemetery	10
bs	Jerusalem Methodist Episcopal Church Cemetery	10
bt	Lebanon Cemetery	10
bu	Liberty Hill Cemetery	15
bv	Long Branch Cemetery	10
bw	McKenzie Cemetery	10
bx	New Hope Cemetery	10
by	Oak Grove Cemetery	10
bz	Potato Creek Cemetery	10
ca	Pugh Cemetery	10
cb	Rhudy Cemetery	10
cc	Round Meadows Cemetery	10
cd	Rugby Cemetery	10
ce	Saddle Creek Cemetery	10
cf	Sawyers Family Cemetery	10
cg	Spring Valley Cemetery	10
ch	Whitetop Cemetery	10
ci	Greene	
cj	Gentry Methodist Church Cemetery	10
ck	Halifax	
cl	Grace Churchyard, Inc., Seaton	3
cm	Halifax Chapter, U.D.C.	20
cn	St. John's Episcopal Church	31
co	Hanover	
cp	Hanover Chapter, U.D.C.	20
cq	Henrico	
cr	Emmanuel Episcopal Church at Brook Hill	86
cs	Isle of Wight	
ct	Isle of Wight Chapter, U.D.C.	20
cu	Lee	
cv	Light Horse Harry Lee Chapter, U.D.C.	100
cw	Ely Cemetery	30

cx	Loudoun	
cy	Ebenezer Cemetery	15
cz	Lakeview Cemetery, Hamilton	15
da	Lee Chapter No. 179	10
db	Leesburg Union Cemetery	15
dc	Sharon Cemetery, Middleburg	20
dd	Louisa	
de	Oakland Cemetery	70
df	Lunenburg	
dg	Sons of the Confederate Veterans Old Free State Camp #1746	141
dh	Madison	
di	Madison Chapter, U.D.C.	10
dj	Mecklenburg	
dk	Boydton Chapter, U.D.C.	10
dl	Armistead-Goode Chapter, U.D.C.	10
dm	Montgomery	
dn	Doctor Harvey Black Chapter, U.D.C.	10
do	White Cemetery, Inc.	10
dp	Nelson	
dq	Nelson County Confederate Memorial Association	10
dr	Nottoway	
ds	Confederate Memorial Board	15
dt	Orange	
du	Maplewood Cemetery, Gordonsville	696
dv	Preddys Creek Cemetery	10
dw	13th Virginia Regiment Chapter, U.D.C.	30
dx	Patrick	
dy	Confederate Memorial Association	40
dz	Pittsylvania	
ea	Pittsylvania County Historical Society	30
eb	Powhatan	
ec	Huguenot Springs Cemetery	130
ed	Prince Edward	
ee	Farmville Chapter, U.D.C.	50
ef	Prince George	
eg	City Point Chapter, U.D.C., for use at Old Town Cemetery	20
eh	Pulaski	

ei	Pulaski Chapter, U.D.C.	10
ej	Roanoke	
ek	Southern Cross Chapter, U.D.C.	10
el	Old Tombstone Cemetery	20
em	Rockbridge	
en	New Monmouth Presbyterian Church	80
eo	New Providence Presbyterian Church	98
ep	Rockingham	
eq	Cedar Grove Cemetery	68
er	Cooks Creek Presbyterian Church Cemetery	39
es	Singers Glen Cemetery	19
et	St. Johns Lutheran Cemetery	10
eu	Scott	
ev	Prospect Community Cemetery	20
ew	McKenney-Carter Cemetery Association	20
ex	Confederate Memorial Branch, Wolfe Cemetery Association, Yuma	15
ey	Estill Memorial Cemetery Association	35
ez	Lawson Confederate Memorial Cemetery	10
fa	Mount Pleasant Cemetery	20
fb	Salling Memorial, Slant	20
fc	Rollins Cemetery	10
fd	Daugherty Cemetery	20
fe	Nickelsville Baptist Church Cemetery	20
ff	Shenandoah	
fg	New Market Confederate Memorial Association	40
fh	Stover Camp Chapter, U.D.C.	10
fi	Mt. Jackson-Old Soldier Cemetery	100
fj	Smyth	
fk	Aspenvale Cemetery	10
fl	Blue Springs Cemetery, Sugar Grove	10
fm	Centenary Cemetery	10
fn	Chatham Hill Cemetery	10
fo	Greenwood Cemetery	10
fp	Holston Chapter, U.D.C.	20
fq	Keesling Cemetery, Rural Retreat	10
fr	Middle Fork Cemetery	10
fs	Morgan Cemetery, Sugar Grove	10

ft	Mt. Carmel Cemetery	20
fu	Mountain View Cemetery, Chilhowie	10
fv	Mt. Zion Cemetery	10
fw	Pleasant Hill Cemetery, Groseclose	12
fx	Ridgedale Cemetery, Rich Valley	10
fy	Riverside Cemetery in Rich Valley	10
fz	Round Hill Cemetery	20
ga	Slemp Cemetery, Sugar Grove	10
gb	St. James Cemetery, Chilhowie	10
gc	South Fork Baptist Cemetery	10
gd	Steffey Cemetery, Groseclose	10
ge	Wassum Cemetery, Atkins	10
gf	Zion Methodist Cemetery, Rich Valley	14
gg	Riverside Cemetery on South Fork	10
gh	Royal Oak Cemetery	10
gi	St. Clair's Bottom Cemetery, Chilhowie	10
gj	Sulphur Springs Cemetery	10
gk	Southampton	
gl	Southampton Chapter, U.D.C.	40
gm	Spotsylvania	
gn	Ladies Confederate Memorial Association	749
go	Surry	
gp	General William Mahone Chapter, U.D.C.	40
gq	Tazewell	
gr	Maplewood Cemetery	20
gs	Hankins Cemetery	20
gt	Warren	
gu	Warren Rifles Chapter, U.D.C.	25
gv	Washington	
gw	Anna Stonewall Jackson Chapter, U.D.C.	20
gx	Emory and Henry Cemetery	203
gy	Greendale Cemetery	20
gz	Warren Cemetery	20
ha	Wise	
hb	Big Stone Gap Chapter, U.D.C.	20
hc	Wythe	
hd	Asbury Cemetery, Rural Retreat	10

he	Fairview Cemetery, Rural Retreat	10
hf	Galilee Christian Church Cemetery	10
hg	Grubbs Cemetery	10
hh	Kemberling Cemetery	10
hi	Marvin Cemetery	30
hj	Mt. Ephraim Cemetery	10
hk	Mount Mitchell Cemetery	10
hl	Mountain View Cemetery	46
hm	Murphysville Cemetery	10
hn	St. John's Cemetery	10
ho	St. Mary's Cemetery	10
hp	St. Paul's Cemetery	14
hq	St. Peter's Lutheran Church Cemetery	12
hr	Speedwell Methodist Cemetery	10
hs	Wythe-Gray Chapter, U.D.C.	20
ht	Zion Cemetery	10
hu	York	
hv	Bethel Memorial Association	20
hw	IN THE CITIES OF:	
hx	Alexandria	
hy	Old Dominion Rifles Confederate Memorial Association	98
hz	Old Presbyterian Meeting House	62
ia	Bristol	
ib	Bristol Confederate Memorial Association	60
ic	Charlottesville	
id	Effort Baptist Church	10
ie	Clifton Forge	
if	Julia Jackson Chapter, U.D.C.	15
ig	Chesapeake	
ih	Norfolk County Grays Chapter 2535, U.D.C.	8
ii	Covington	
ij	Alleghany Chapter, U.D.C.	30
ik	Danville	
il	Eliza Johns Chapter, U.D.C.	201
im	Fredericksburg	
in	Fredericksburg Cemetery	310
io	Fredericksburg Confederate Memorial Association	200

ip	Hampton	
iq	Hampton Chapter, U.D.C.	60
ir	Harrisonburg	
is	Turner Ashby Chapter, U.D.C.	60
it	Woodbine Cemetery	140
iu	Lexington	
iv	Rockbridge Chapter, U.D.C.	126
iw	Lynchburg	
ix	Lynchburg Confederate Memorial Association	30
iy	Manassas	
iz	Ladies Confederate Memorial Association of Manassas	15
ja	Martinsville	
jb	Mildred Lee Chapter, U.D.C.	10
jc	Newport News	
jd	Bethel Chapter, U.D.C.	50
je	Norfolk	
jf	Hope Maury Chapter, U.D.C.	10
jg	Pickett-Buchanan Chapter, U.D.C.	20
jh	Petersburg	
ji	Petersburg Chapter, U.D.C., for Prince George County	15
jj	Ladies Memorial Association of Petersburg	140
jk	Portsmouth	
jl	Ladies Confederate Memorial Association	15
jm	Portsmouth Cedar Grove Cemetery	407
jn	Radford	
jo	New River Gray's Chapter, U.D.C.	15
jp	Radford Chapter, U.D.C.	15
jq	Richmond	
jr	Centennial Chapter, U.D.C.	20
js	Elliott Grays Chapter, U.D.C.	15
jt	Janet Randolph Chapter, U.D.C.	15
ju	Lee Chapter, U.D.C.	20
jv	Sons of Confederate Veterans -- Virginia Division	2294
jw	Richmond-Stonewall Jackson Chapter, U.D.C.	110
jx	Roanoke	
jy	Roanoke Chapter, U.D.C.	40
jz	William Watts Chapter, U.D.C.	40

ka	Salem	
kb	Southern Cross Chapter, U.D.C.	271
kc	Staunton	
kd	Confederate Section, Thornrose Cemetery	600
ke	Suffolk	
kf	Cedar Hill Cemetery	197
kg	Vinton	
kh	Major Wm. F. Graves Chapter, U.D.C.	40
ki	Williamsburg	
kj	Williamsburg Chapter, U.D.C.	125
kk	Winchester	
kl	Stonewall Confederate Memorial Association	2112

C. In addition to funds that may be provided pursuant to subsection B, any of the Confederate memorial associations and chapters of the United Daughters of the Confederacy set forth in subsection B may apply to the Director for grants to perform extraordinary maintenance, renovation, repair or reconstruction of any of their respective Confederate cemeteries and graves and for the graves of Confederate soldiers and sailors. These grants shall be made from any appropriation made available by the General Assembly for such purpose. In making such grants, the Director shall give full consideration to the assistance available from the United States Department of Veterans Affairs, or other agencies, except in those instances where such assistance is deemed by the Director to be detrimental to the historical, artistic or architectural significance of the site.

D. Local matching funds shall not be required for grants made pursuant to this section.

Code 1950, § 2.1-206.1; 1977, c. 242; 1978, c. 726; 1979, cc. 19, 151; 1980, c. 672; 1981, c. 537, § 10.145.11; 1984, cc. 412, 750; 1985, cc. 263, 267; 1986, cc. 120, 385; 1988, cc. 310, 891, § 10.1-812; 1989, cc. 656, 711; 1992, c. 640; 1994, c. 78; 1995, c. 176; 1997, cc. 72, 255, 270, 811; 1998, c. 233; 1999, c. 473; 2000, c. 114; 2001, cc. 267, 279, 284; 2002, cc. 181, 188, 225; 2003, c. 585; 2006, cc. 489, 630; 2009, c. 53; 2011, cc. 543, 603; 2012, c. 534; 2013, c. 42; 2014, cc. 15, 46, 110; 2016, c. 43.

§ 10.1-2211.1. Disbursement of funds appropriated for caring for Revolutionary War cemeteries and graves.

A. At the direction of the Director, the Comptroller of the Commonwealth is instructed and empowered to draw annual warrants upon the State Treasurer from any sums that may be provided in the general appropriation act, in favor of the treasurers of the Virginia Society of the Sons of the American Revolution (VASSAR) and the Revolutionary War memorial associations caring for cemeteries as set forth in subsection B. Such sums shall be expended by the associations for the routine maintenance of their respective Revolutionary War cemeteries and graves and for the graves of Revolutionary War soldiers and sailors not otherwise cared for in other cemeteries and in erecting and caring for markers, memorials, and monuments to the memory of such soldiers, sailors, and persons rendering service to the Patriot cause in the Revolutionary War. All such associations, through their proper officers, are required

after July 1 of each year to submit to the Director a certified statement that the funds disbursed to the association or organization in the preceding fiscal year were or will be expended for the routine maintenance of cemeteries and graves specified in this section and in erecting and caring for markers, memorials, and monuments to the memory of such soldiers, sailors, and persons rendering service to the Patriot cause in the Revolutionary War. If a cemetery association fails to comply with any of the requirements of this section, such association shall be prohibited from receiving moneys allocated under this section for all subsequent fiscal years until the association fully complies with the requirements. No retroactive disbursement of funds for any preceding year shall be made. The Director shall deposit any appropriated funds that are not disbursed during the same fiscal year into the Revolutionary War Cemeteries and Graves Fund created pursuant to § 10.1-2211.1:1.

B. Allocation of appropriations made pursuant to this section shall be based on the number of graves, monuments, and markers as set forth opposite the cemetery name, or as documented by each association multiplied by the rate of $5 or the average actual cost of routine maintenance, whichever is greater, for each grave, monument, or marker in the care of a cemetery association. For the purposes of this section, the "average actual cost of care" shall be determined by the Department in a biennial survey of at least four properly maintained cemeteries, each located in a different geographical region of the Commonwealth.

a	IN THE COUNTIES OF:	NUMBER:
b	Amherst	
c	St. Matthews Episcopal Church	3
d	Augusta	
e	Bethel Presbyterian Church	33
f	Glebe Burying Ground	11
g	Mossy Creek Cemetery	6
h	Augusta Stone Presbyterian Church	44
i	Hebron Presbyterian Church	6
j	Old Providence Presbyterian Church	20
k	Rocky Spring Presbyterian Church	4
l	St. John's Reformed Lutheran Church	4
m	St. Peter's Lutheran Church	3
n	Tinkling Springs Presbyterian Church	13
o	Trinity Lutheran Church	8
p	Botetourt	
q	Fincastle Presbyterian Church	28
r	Campbell	
s	Callaway-Steptoe Cemetery	4
t	Cobbs Hall Farm	3

u	Concord Presbyterian Church	4
v	Family Cemetery at Avoca	3
w	Mount Airy Family Cemetery	3
x	Haden Family Cemetery on Phillips Farm	3
y	Hat Creek Presbyterian Church	3
z	Clarke	
aa	Old Chapel Churchyard	3
ab	Culpeper	
ac	Culpeper Cemetery	3
ad	Masonic Cemetery	3
ae	Dinwiddie	
af	Sweden Plantation	3
ag	Floyd	
ah	Pine Creek Cemetery	4
ai	Franklin	
aj	Tanyard-Benard-Hill Cemetery	3
ak	Greenesville	
al	Robinson Family Cemetery	3
am	Halifax	
an	Terry Family Cemetery	5
ao	Hanover	
ap	Spring Grove Cemetery	5
aq	Henry	
ar	Leatherwood Plantation	5
as	Loudoun	
at	Ketoctin Cemetery	7
au	Louisa	
av	Little River Baptist Church	3
aw	Nelson	
ax	Cub Creek Road Cemetery	10
ay	Page	
az	Printz Family Cemetery	3
ba	Pittsylvania	
bb	Buckler Family Cemetery	3
bc	Roanoke	
bd	Walton Family Cemetery	3
be	Rockingham	

bf	Dayton Cemetery	3
bg	Old Peaked Mountain Church	30
bh	Russell	
bi	Soloman Litton Hollow Cemetery	4
bj	Shenandoah	
bk	St. Mary's Lutheran Church	7
bl	Tazewell	
bm	Thompson Family Cemetery	4
bn	Washington	
bo	Green Spring Church	6
bp	Sinking Spring Cemetery	9
bq	Wythe	
br	St. John's Lutheran Church	5
bs	St. Paul's Lutheran Church	4
bt	IN THE CITIES OF:	
bu	Alexandria	
bv	Christ Church Cemetery	8
bw	Old Presbyterian Meeting House	43
bx	Fairfax	
by	Fairfax City Cemetery	3
bz	Pohick Church Cemetery	3
ca	Washington Family Tomb	3
cb	Fredericksburg	
cc	Fredericksburg Cemetery	5
cd	Masonic Cemetery	6
ce	St. George's Episcopal Church	3
cf	Lexington	
cg	Stonewall Jackson Memorial Cemetery	19
ch	Washington and Lee University	3
ci	Lynchburg	
cj	Old City Cemetery	3
ck	Newport News	
cl	Warwick Burial Ground	3
cm	Norfolk	
cn	St. Paul's Cemetery	3
co	Portsmouth	
cp	Cedar Grove	4

cq	Trinity Episcopal Church	5
cr	Richmond	
cs	Hollywood Cemetery	4
ct	Shockoe Hill Cemetery	8
cu	St. John's Episcopal Church	4
cv	Rockbridge	
cw	Falling Spring Presbyterian Church	6
cx	High Bridge Presbyterian Church	3
cy	New Providence Presbyterian Church	16
cz	Timber Ridge Cemetery	9
da	Staunton	
db	Trinity Episcopal Church	17
dc	Williamsburg	
dd	Bruton Parish Church	4
de	Winchester	
df	Mount Hebron Cemetery	31
dg	Old Opequon Presbyterian Church	10

C. In addition to funds that may be provided pursuant to subsection B, any of the associations set forth in subsection B may apply to the Director for grants to perform extraordinary maintenance, renovation, repair or reconstruction of any of their respective Revolutionary War cemeteries and graves and for the graves of Revolutionary War soldiers and sailors. These grants shall be made from any appropriation made available by the General Assembly for such purpose. In making such grants, the Director shall give full consideration to the assistance available from the United States Department of Veterans Affairs, or other agencies, except in those instances where such assistance is deemed by the Director to be detrimental to the historical, artistic or architectural significance of the site.

C. In addition to any sums that may be provided in favor of the associations as set forth in subsection B, the Director shall disburse funds at the same rate to VASSAR to fund its maintenance of no more than 6,000 additional Revolutionary War graves in the Commonwealth, as documented and certified by VASSAR and set forth in a list submitted annually to the Director.

D. Any of the associations and societies set forth in subsection B or C may apply to the Director for grants to perform extraordinary maintenance, renovation, repair, or reconstruction of any of their respective Revolutionary War cemeteries and graves and to erect and care for markers, memorials, and monuments to the memory of such soldiers, sailors, and persons rendering service to the Patriot cause in the Revolutionary War. These grants shall be made from any appropriation made available by the General Assembly for such purpose or from the Revolutionary War Cemeteries and Graves Fund created pursuant to § 10.1-2211.1:1. In making such grants, the Director shall give full consideration to the assistance available from the U.S. Department of Veterans Affairs or other agencies,

except in those instances where such assistance is deemed by the Director to be detrimental to the historical, artistic, or architectural significance of the site.

E. Local matching funds shall not be required for grants made pursuant to this section.

2002, c. 256; 2007, c. 349; 2018, cc. 639, 641.

§ 10.1-2211.1:1. Revolutionary War Cemeteries and Graves Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Revolutionary War Cemeteries and Graves Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose, all funds deposited in the Fund pursuant to subsection A of § 10.1-2211.1, and any gifts, donations, grants, bequests, and other funds received on its behalf 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 out in subsection D of § 10.1-2211.1. 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.

2018, cc. 639, 641.

§ 10.1-2211.2. Disbursement of funds appropriated for caring for historical African American cemeteries and graves.

A. For purposes of this section:

"Fund" means the Historical African American Cemeteries and Graves Fund created pursuant to § 10.1-2211.3.

"Historical African American cemetery" means a cemetery that was established prior to January 1, 1900, for interments of African Americans.

"Qualified organization" means a charitable corporation, charitable association, or charitable trust that has been granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code and whose primary purpose is the preservation of historical cemeteries and graves or any person or locality that owns a historical African American cemetery.

B. At the direction of the Director, the Comptroller of the Commonwealth shall draw an annual warrant upon the State Treasurer from any sum that may be provided to the Department in the general appropriation act for the purpose of maintaining qualifying cemeteries and graves pursuant to this section. Any representative of a qualified organization desiring to receive funding from such appropriation for the maintenance of qualifying cemeteries and graves pursuant to this section shall submit an application to the Department on or before May 30 each year. Such appropriations shall be allocated on the basis of the number of graves, monuments, and markers in a cemetery of African Americans who lived at any time between January 1, 1800, and January 1, 1900, the dates to be determined by reference to

grave markers or, at the discretion of the Director, other historical records. Such number of graves, monuments, and markers, as documented by the qualified organization, shall be multiplied by the rate of $5 or the average actual cost of routine maintenance of a grave, monument, or marker, whichever is greater, to determine the amount of the allocation. The Department shall determine the average actual cost of routine maintenance of a grave, monument, or marker in a biennial survey of at least four properly maintained cemeteries, each located in a different geographical region of the Commonwealth. The Director shall deposit any appropriated funds that are not disbursed during the same fiscal year into the Fund.

a	IN THE COUNTY OF:	NUMBER:
b	Arlington	
c	Calloway Cemetery	29
d	Lomax Cemetery	66
e	Mount Salvation Cemetery	29
f	Buckingham	
g	Stanton Family Cemetery	36
h	Henrico	
i	East End Cemetery	4,875
j	Loudoun	
k	African-American Burial Ground for the Enslaved at Belmont	44
l	Mt. Zion Old School Baptist Church Cemetery	33
m	Montgomery	
n	Wake Forest Cemetery	40
0	Westview Cemetery	47
p	Pulaski	
q	New River Cemetery	33
r	West Dublin Cemetery	44
s	IN THE CITY OF:	
t	Alexandria	
u	Baptist Cemetery of the African American Heritage Park	28
v	Contrabands and Freedmen Cemetery	631
w	Douglass Cemetery	83
x	Lebanon Union Cemetery	53
y	Methodist Protestant Cemetery	1,134
z	Penny Hill Cemetery	14
aa	Charlottesville	
ab	Daughters of Zion Cemetery	192
ac	Chesapeake	

ad	Cuffeytown Cemetery	52
ae	Hampton	
af	Bassette's Cemetery	212
ag	Elmerton Cemetery	339
ah	Good Samaritan Cemetery	37
ai	Pleasant Shade Cemetery	29
aj	Queen Street Cemetery	14
ak	Tucker Family Cemetery	15
al	Union Street Cemetery	125
am	Harrisonburg	
an	Newtown Cemetery	400
ao	Martinsville	
ap	Matthews Cemetery	8
aq	The People's Cemetery	178
ar	Smith Street Cemetery	9
as	Portsmouth	
at	Mt. Calvary Cemetery	266
au	Radford	
av	Mountain View Cemetery	91
aw	Richmond	
ax	Evergreen Cemetery	2,100
ay	Suffolk	
az	Oak Lawn Cemetery	468

C. In addition to any sum provided to a qualified organization as set forth in subsection B, the Director may disburse funds to any qualified organization to fund maintenance and care of additional historical African American graves in the Commonwealth that have been certified by the Department and documented in the Department's cultural resources database. Funds disbursed under this subsection shall be disbursed at the rate set forth in subsection B.

D. A qualified organization receiving funds shall expend the funds for the routine maintenance of its historical African American cemetery, associated graves, and graves certified by the Department and documented in the Department's cultural resources database and the erection of and caring for markers, memorials, and monuments to the memory of such African Americans.

E. Each qualified organization, through its proper officer, shall after July 1 of each year submit to the Director a certified statement that the funds appropriated to the organization during the preceding fiscal year were or will be expended for the purposes set forth in subsection D. No organization that fails to comply with any of the requirements of this section shall receive moneys allocated under this section for any subsequent fiscal year until the organization fully complies with the requirements.

F. In addition to funds that may be provided pursuant to subsection B or C, any organization that receives funds pursuant to subsection B or C may apply to the Director for a grant to perform extraordinary maintenance, renovation, repair, or reconstruction of any of its historical African American cemeteries and graves. Such a grant shall be made from any appropriation made available by the General Assembly for such purpose or from the Fund.

G. Any locality may receive and hold funds drawn pursuant to subsection B or C on behalf of any qualified organization until such time as the organization is able to receive or utilize such funds. No local matching funds shall be required for any grants made pursuant to this section.

H. The owner of a historical African American cemetery shall reasonably cooperate with a qualified organization that receives funds pursuant to subsection B or C.

2017, c. 270; 2018, cc. 428, 433, 434, 614, 818; 2019, cc. 184, 251, 252, 257, 260, 268; 2020, cc. 82, 83, 455, 456.

§ 10.1-2211.3. Historical African American Cemeteries and Graves Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Historical African American Cemeteries and Graves Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds appropriated for such purpose, all funds deposited in the Fund pursuant to subsection B or C of § 10.1-2211.2, and any gifts, donations, grants, bequests, and other funds received on its behalf 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 out in subsections B and C of § 10.1-2211.2. 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.

2020, cc. 455, 456.

§ 10.1-2212. Listing of certain historical societies receiving appropriations.

A. At the direction of the Director, the Comptroller of the Commonwealth is instructed and empowered to draw annual warrants upon the State Treasurer, as provided in the general appropriations act, in favor of the treasurers of certain historical societies, museums, foundations, and associations for use in caring for and maintaining collections, exhibits, sites, and facilities owned by such historical organizations, specified as follows:

1. Virginia Historical Society. For aid in maintaining Battle Abbey at Richmond.

2. Confederate Museum at Richmond. For the care of Confederate collections and maintenance of the Virginia Room.

3. Valentine Museum at Richmond. For providing exhibits to the public schools of Virginia.

4. Woodrow Wilson Birthplace Foundation, Incorporated. To aid in restoring and maintaining the Woodrow Wilson home at Staunton.

5. Robert E. Lee Memorial Association, Incorporated. To aid in further development of "Stratford" in Westmoreland County.

6. Poe Foundation, Incorporated. To aid in maintaining the Poe Shrine at Richmond.

7. Patrick Henry Memorial Foundation at Brookneal. To aid in maintaining home.

8. Hanover County Branch, Association for the Preservation of Virginia Antiquities. To aid in maintaining the Patrick Henry home at "Scotchtown" in Hanover County.

9. Historic Lexington Foundation. To aid in restoration and maintenance of the Stonewall Jackson home at Lexington.

10. "Oatlands," Incorporated. To aid in maintaining "Oatlands" in Loudoun County.

11. Montgomery County Branch, Association for the Preservation of Virginia Antiquities. To aid in maintaining Smithfield Plantation House.

12. The Last Capitol of the Confederacy. For the preservation of the Last Capitol of the Confederacy in Danville.

13. Association for the Preservation of Virginia Antiquities. For assistance in maintaining certain historic landmarks throughout the Commonwealth.

14. The Corporation for Jefferson's "Poplar Forest." To aid in restoring, maintaining, and operating "Poplar Forest," Thomas Jefferson's Bedford County home.

15. Belle Grove, Incorporated. To aid in providing educational programs for Virginia students.

16. George Washington's Fredericksburg Foundation. To aid in the restoration and perpetuation of "Ferry Farm," George Washington's boyhood home.

17. Montpelier National Trust for Historic Preservation. To aid in restoring, maintaining, and operating Montpelier, the lifelong home of President James Madison, in Orange County.

18. Eastern Shore of Virginia Historical Society. To aid in restoring, maintaining and operating Kerr Place in Accomack County.

19. New Town Improvement and Civic Club, Inc. To aid in restoring, maintaining and operating Little England Chapel, a landmark to Hampton's first generation of freedmen, in the City of Hampton.

20. Woodlawn Plantation. To aid in the preservation and maintenance of Woodlawn Plantation.

21. Friends of Historic Huntley. To support the research and preservation of Historic Huntley Mansion.

22. Menokin Foundation, Incorporated. To aid in further development of Menokin, home of Francis Lightfoot Lee.

23. Historic Gordonsville, Inc., the owner of the Gordonsville Exchange Hotel. To aid in maintaining the Gordonsville Exchange Hotel and in providing educational programs for Virginia's students.

B. Organizations receiving state funds as provided for in this section shall certify to the satisfaction of the Department that matching funds from local or private sources are available in an amount at least equal to the amount of the request in cash or in kind contributions which are deemed acceptable to the Department.

C. Requests for funding of historical societies or like organizations as set forth in subsection A shall be considered by the Governor and the General Assembly only in even-numbered years.

1981, c. 537, § 10-145.12; 1984, cc. 2, 528, 563, 750; 1987, c. 481; 1988, c. 891, § 10.1-813; 1989, cc. 656, 711; 1990, c. 817; 1993, c. 264; 1994, cc. 162, 495; 1995, c. 28; 1996, cc. 227, 420; 1998, c. 172; 2000, cc. 7, 18.

§ 10.1-2213. Procedure for appropriation of state funds for historic preservation.

A. No state funds, other than for the maintenance and operation of those facilities specified in § 10.1-2211 or 10.1-2212 and for the purchase of property for preservation of historical resources by the Virginia Land Conservation Foundation as provided in Chapter 10.2 (§ 10.1-1017 et seq.) of this title, shall be appropriated or expended for or to organizations, whether localities or private entities, as set forth in the general appropriations act for: (i) the maintenance of collections and exhibits; (ii) the maintenance, operation, and interpretation of historic sites and facilities owned or operated by such organizations; or (iii) operational and educational activities pursuant to subsection C unless:

1. A request and completed application for state aid is filed by the organization with the Department, on forms prescribed by the Department, on or before October 1 prior to each regular session of the General Assembly in an even-numbered year. Requests shall be considered by the Governor and the General Assembly only in even-numbered years. The Department shall review each application made by an organization for state aid prior to consideration by the General Assembly. The Department shall provide a timely review of any amendments proposed by members of the General Assembly to the chairmen of the House Appropriations and Senate Finance Committees. The review shall examine the merits of each request, including data showing the percentage of federal, local, or private funds raised by the organization for the proposed project. The review and analysis provided by the Department shall be strictly advisory. The Department shall forward to the Department of Planning and Budget any application that is not for the maintenance of collections and exhibits or for the maintenance, operation, and interpretation of historic sites and facilities. Such applications shall be governed by the procedures identified in § 2.2-1505.

2. Any such private organization shall certify to the satisfaction of the Department that matching funds from federal, local, or private sources are available in an amount at least equal to the amount of the request in cash or in kind contributions which are deemed acceptable to the Department. These matching funds must be concurrent with the project for which the state grant is requested. Contributions

received and spent prior to the state grant shall not be considered in satisfying the requirements of this subdivision.

3. Any such private organization shall provide documentation of its tax exempt status under § 501(c)(3) of the United States Internal Revenue Code.

4. Such organization shall certify that the applicant has read and acknowledged all information and requirements regarding how the grants will be administered and how funds will be disbursed.

5. Such organization shall state in its application the purpose of the grant. The grant recipient must justify and request in writing approval by the Department for changes in the scope of the project prior to implementing those changes. If grant funds are used for something other than the purpose for which they were requested without prior review and approval by the Department, then all state funds must be returned.

6. Such organization shall submit documentation on match funding and approved expenditures shall be submitted with all requests for disbursement.

7. Such organization shall provide progress reports as prescribed by the Department. At a minimum such reports shall be submitted with reimbursement requests and a final report at the conclusion of the project.

8. Such organization receiving the state grant shall comply with applicable state procurement requirements pursuant to the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

9. In the case of new construction or ground disturbing activities funded by state grants, the organization shall afford the Department an opportunity to review the potential impact on any historic resources. Such review shall be provided by the Department within 15 days of receipt of completed information.

10. For all state grants for capital projects, whether for new construction, rehabilitation, restoration, or reconstruction, funds shall be disbursed only as reimbursement for approved activities.

For the purposes of this section, no grant shall be approved for private institutions of higher education or religious organizations.

B. In addition to the requirements of subsection A of this section, no state funds other than for those facilities specified in § 10.1-2211 or 10.1-2212 shall be appropriated or expended for the rehabilitation, restoration, or reconstruction of any historic site unless:

1. The property is designated as a historic landmark by the Board and is located on the register prepared by the Department pursuant to § 10.1-2202 or has been declared eligible by the Board for such designation but has not actually been placed on the register of buildings and sites provided for in § 10.1-2202;

2. The organization owning such property and any organization managing such property, if different from the owner, enter into an agreement with the Department that the property will be open to the

public for at least 100 days per year for no less than five years following completion of the project for which state funds are received;

3. The organization owning the property and any organization managing the project, if different from the owner, submit the plans and specifications of the project to the Department for review and approval to ensure that the project meets generally accepted standards for historic preservation; and

4. The organization owning the property grants to the Commonwealth a perpetual easement placing restrictions on alterations to, or development of, the property satisfactory to the Board, if the organization has received $50,000 or more within a four-year period pursuant to this section. The easement shall be for the purpose of preserving those features of the property which led to its designation as a historic landmark.

Nothing contained in this subsection shall prohibit any organization from charging a reasonable admission fee during the five-year period required in subdivision 2 herein if the fee is comparable to fees charged at similar facilities in the area.

C. The Department shall be responsible for the administration of this section and §§ 10.1-2211 and 10.1-2212 and the disbursement of all funds appropriated thereto.

State funds appropriated for the operation of historical societies, museums, foundations, associations, or other such organizations shall be expended for historical facilities, reenactments, meetings, conferences, tours, seminars, or other general operating expenses as may be specified in the general appropriations act. Funds appropriated for these purposes shall be distributed annually to the treasurers of any such organizations. The appropriations act shall clearly designate that all such funds are to be used for the operating expenses of such organization.

1981, c. 537, § 10-145.13; 1987, c. 481; 1988, c. 891, § 10.1-814; 1989, cc. 656, 711; 1992, cc. 138, 426; 1999, cc. 900, 906; 2005, c. 86; 2010, c. 291.

§ 10.1-2213.1. Matching grants for contributions to a material restoration of a Presidential home.

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

"Charitable contribution" means a cash contribution from an individual, estate, corporation, partnership, trust, foundation, fund, association or any other entity or organization provided that (i) the contribution is allowable as a deduction for federal tax purposes or (ii) would have been allowable as a deduction for federal tax purposes had the entity or organization been subject to federal taxes.

"Eligible restoration expenses" means expenses incurred in the material restoration of a historic presidential home and, except in the case of demolition necessary to accomplish the restoration plan, added to the property's capital account.

"Foundation" means an entity that is exempt from federal taxation under § 501(c)(3) of the Internal Revenue Code of 1986, as may be amended, that is primarily responsible for the material restoration of a historic presidential home.

"Historic presidential home" means any home of a President of the United States located in Orange County, Virginia that is individually designated as a National Historic Landmark by the United States Secretary of the Interior.

"Material restoration" means restoration work (i) that restores a historic presidential home to within the period of significance stated in the National Historic Landmark individual designation of such home by the United States Secretary of the Interior, (ii) that is consistent with "The Secretary of the Interior's Standards for Restoration," and (iii) the cost of which amounts to at least 50 percent of the assessed value of such home for local real estate tax purposes for the year prior to the initial expenditure of any eligible restoration expenses, unless such home is an owner-occupied building, in which case the cost shall amount to at least 25 percent of the assessed value of such home for local real estate tax purposes for the year prior to the initial expenditure of any eligible restoration expenses.

B. The Commonwealth shall provide matching grants for charitable contributions received on or after July 1, 2003, by the Foundation that are actually spent or expended by the Foundation in the material restoration of a historic presidential home. The amount of the matching grant to be paid by the Commonwealth shall equal $0.20 for each $1 of charitable contribution that is actually spent or expended by the Foundation in the material restoration of a historic presidential home.

C. In January of each calendar year the Foundation shall submit to the Director the total amount of charitable contributions it received that were actually spent or expended in the immediately preceding calendar year for the material restoration of a historic presidential home. As a condition of receiving a matching grant, the Foundation shall at the same time submit to the Director such other information requested by the Director that is reasonably necessary to verify such charitable contributions and the actual use of such contributions.

The Director shall, as soon as practicable after receiving such submission and verifying such charitable contributions and their actual expenditure for the material restoration of a historic presidential home, make a written certification to the Comptroller of the amount of the grant to be paid to the Foundation. The amount of the grant for each calendar year shall be paid to the Foundation in six equal annual installments on March 15 of each year beginning with the year of the Director's certification for the relevant calendar year.

D. In no case shall the total amount of grants paid under this section exceed 20 percent of the estimated eligible restoration expenses of the historic presidential home. The Director is authorized to suspend the processing of charitable contribution submissions made by the Foundation if the Director reasonably believes that (i) such maximum amount may be exceeded or (ii) the material restoration will not be performed or such restoration work has been indefinitely suspended.

2005, c. 470.

§ 10.1-2214. Underwater historic property; penalty.

A. "Underwater historic property" means any submerged shipwreck, vessel, cargo, tackle or underwater archaeological specimen, including any object found at underwater refuse sites or submerged

sites of former habitation, that has remained unclaimed on the state-owned subaqueous bottom and has historic value as determined by the Department.

B. Underwater historic property shall be preserved and protected and shall be the exclusive property of the Commonwealth. Preservation and protection of such property shall be the responsibility of all state agencies including but not limited to the Department, the Virginia Institute of Marine Science, and the Virginia Marine Resources Commission. Insofar as may be practicable, such property shall be preserved, protected and displayed for the public benefit within the county or city within which it is found, or within a museum operated by a state agency.

C. It shall be unlawful for any person, firm or corporation to conduct any type of recovery operations involving the removal, destruction or disturbance of any underwater historic property without first applying for and receiving a permit from the Virginia Marine Resources Commission to conduct such operations pursuant to § 28.2-1203. If the Virginia Marine Resources Commission, with the concurrence of the Department and in consultation with the Virginia Institute of Marine Science and other concerned state agencies, finds that granting the permit is in the best interest of the Commonwealth, it shall grant the applicant a permit. The permit shall provide that all objects recovered shall be the exclusive property of the Commonwealth. The permit shall provide the applicant with a fair share of the objects recovered, or in the discretion of the Department, a reasonable percentage of the cash value of the objects recovered to be paid by the Department. Title to all objects recovered shall be retained by the Commonwealth unless or until they are released to the applicant by the Department. All recovery operations undertaken pursuant to a permit issued under this section shall be carried out under the general supervision of the Department and in accordance with § 28.2-1203 and in such a manner that the maximum amount of historical, scientific, archaeological and educational information may be recovered and preserved in addition to the physical recovery of items. The Virginia Marine Resources Commission shall not grant a permit to conduct operations at substantially the same location described and covered by a permit previously granted if recovery operations are being actively pursued, unless the holder of the previously granted permit concurs in the grant of another permit.

D. The Department may seek a permit pursuant to this section and § 28.2-1203 to preserve and protect or recover any underwater historic property.

E. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor and, in addition, shall forfeit to the Commonwealth any objects recovered.

1984, c. 750, § 10-262; 1988, c. 891, § 10.1-817; 1989, c. 656.

Article 2 - VIRGINIA WAR MEMORIAL

§§ 10.1-2215, 10.1-2216. Repealed.

Repealed by Acts 1992, c. 592.

Chapter 23 - Virginia Antiquities Act

§ 10.1-2300. Definitions.

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

"Field investigation" means the study of the traces of human culture at any site by means of surveying, sampling, excavating, or removing surface or subsurface material, or going on a site with that intent.

"Field supervisor" means a person who is physically present at least 70 percent of the time during a field investigation, exploration, or recovery operation involving the removal, destruction, or disturbance of any object of antiquity and who directly oversees such field investigation, exploration, or recovery operation.

"Object of antiquity" means any relic, artifact, remain, including human skeletal remains, specimen, or other archaeological article that may be found on, in or below the surface of the earth which has historic, scientific, archaeologic or educational value.

"Person" means any natural individual, partnership, association, corporation or other legal entity.

"Site" means a geographical area on dry land that contains any evidence of human activity which is or may be the source of important historic, scientific, archaeologic or educational data or objects.

"State archaeological site" means an area designated by the Department in which it is reasonable to expect to find objects of antiquity.

"State archaeological zone" means an interrelated grouping of state archaeological sites.

"State archaeologist" means the individual designated pursuant to § 10.1-2301.

"State-controlled land" means any land owned by the Commonwealth or under the primary administrative jurisdiction of any state agency. State agency shall not mean any county, city or town, or any board or authority organized under state law to perform local or regional functions. Such land includes but is not limited to state parks, state wildlife areas, state recreation areas, highway rights-of-way and state-owned easements.

1977, c. 424, § 10-150.3; 1984, c. 750; 1988, c. 891, § 10.1-900; 1989, c. 656; 2005, c. 457; 2020, c. 1106.

§ 10.1-2301. Duties of Director.

The Director shall:

1. Coordinate all archaeological research on state-controlled land and in state archaeological sites and zones;

2. Coordinate a survey of significant archaeological sites located on state-controlled land, and upon request, survey and officially recognize significant archaeological sites on privately owned property;

3. Identify, evaluate, preserve and protect sites and objects of antiquity which have historic, scientific, archaeologic or educational value and are located on state-controlled land or on state archaeological sites or zones;

4. Protect archaeological sites and objects located on state-controlled land or on state archaeological sites or zones from neglect, desecration, damage and destruction;

5. Ensure that archaeological sites and objects located on state-controlled land or on state archaeological sites or zones are identified, evaluated and properly explored so that adequate records may be made;

6. Encourage private owners of designated state archaeological sites to cooperate with the Commonwealth to preserve the site;

7. Encourage a statewide archaeological education program to inform the general public of the importance of its irreplaceable archaeological heritage; and

8. Designate the State Archaeologist to (i) assist the Director by coordinating, overseeing, or otherwise carrying out the provisions of this chapter and (ii) perform such other duties as required by the Director. The State Archaeologist shall be a technically trained archaeologist and shall have both a practical and theoretical knowledge of archaeology.

1977, c. 424, §§ 10-150.2, 10-150.8; 1984, c. 750; 1988, c. 891, § 10.1-901; 1989, c. 656; 2005, c. 457.

§ 10.1-2302. Permit required to conduct field investigations; ownership of objects of antiquity; penalty.

A. It is unlawful for any person to conduct any type of field investigation, exploration, or recovery operation involving the removal, destruction, or disturbance of any object of antiquity on state-controlled land, or on a state archaeological site or zone, without first receiving a permit from the Director.

B. The Director may issue a permit to conduct field investigations if the Director determines that (i) it is in the best interest of the Commonwealth and (ii) the applicant has identified a field supervisor who is a qualified professional archaeologist and who meets or exceeds the following standards:

1. Holds a graduate degree in archaeology, anthropology, or a closely related field;

2. Has at least one year of full-time professional experience or equivalent specialized training in archaeological research, administration, or management;

3. Has at least four months of supervised field and analytic experience in general North American archaeology;

4. Has at least one year of full-time experience at a supervisory level in the study of archaeological resources of the prehistoric or historic period;

5. Has demonstrated an ability to carry research to completion;

6. Has demonstrated the knowledge, skills, and experience to complete the type of investigations proposed; and

7. Has an active membership in or affiliation with a recognized professional archaeological organization, such as the Register of Professional Archaeologists, the Council of Virginia Archaeologists, or

a similar organization or institution with an established code of professional ethics and conduct and documented grievance procedures.

In determining whether the field supervisor meets such standards, the Director may consider the performance of the field supervisor on any prior permitted field investigation, exploration, or recovery operation.

C. The permit shall require that all objects of antiquity that are recovered from state-controlled land shall be the exclusive property of the Commonwealth. Title to some or all objects of antiquity that are discovered or removed from a state archaeological site not located on state-controlled land may be retained by the owner of such land. All objects of antiquity that are discovered or recovered on or from state-controlled land shall be retained by the Commonwealth, unless they are released to the applicant by the Director.

D. All field investigations, explorations, or recovery operations undertaken pursuant to a permit issued under this section shall be carried out under the general supervision of the Director and in a manner to ensure that the maximum amount of historic, scientific, archaeologic, and educational information may be recovered and preserved in addition to the physical recovery of objects.

E. If the field investigation described in the application is likely to interfere with the activity of any state agency, no permit shall be issued unless the applicant has secured the written approval of such agency.

F. Any person who conducts any field investigation, exploration, or recovery operation without first obtaining a permit pursuant to subsection A is guilty of a Class 1 misdemeanor.

Any person who willfully misrepresents any information on an application for a permit pursuant to this section is guilty of a Class 1 misdemeanor.

Any person who willfully misrepresents the results, information, or data collected during a permitted field investigation, exploration, or recovery operation is guilty of a Class 1 misdemeanor.

1977, c. 424, § 10-150.5; 1984, c. 750; 1988, c. 891, § 10.1-903; 1989, c. 656; 2020, c. 1106.

§ 10.1-2303. Control of archaeological sites; authority of Director to contract.

A. The Commonwealth of Virginia reserves to itself, through the Director, the exclusive right and privilege of field investigation on sites that are on state-controlled land. The Director shall first obtain all permits of other state agencies required by law. The Director is authorized to permit others to conduct such investigations.

B. All objects of antiquity derived from or found on state-controlled land shall remain the property of the Commonwealth.

1977, c. 424, §§ 10-150.4, 10-150.6; 1984, c. 750; 1988, c. 891, § 10.1-904; 1989, c. 656.

§ 10.1-2304. Designating archaeological sites and zones.

The Director may designate state archaeological sites and state archaeological zones on private property or on property owned by any county, city or town, or board or authority organized to perform local or regional functions in the Commonwealth provided that the Director secures the express prior written consent of the owner of the property involved. No state archaeological site or zone located on private property may be established within the boundaries of any county, city or town which has established a local archaeological commission or similar entity designated to preserve, protect and identify local sites and objects of antiquity without the consent of the local governing body. Field investigations may not be conducted on a designated site without a permit issued by the Director pursuant to § 10.1-2302.

1977, c. 424, § 10-150.7; 1984, c. 750; 1988, c. 891, § 10.1-905; 1989, c. 656.

§ 10.1-2305. Permit required for the archaeological excavation of human remains.

A. It shall be unlawful for any person to conduct any type of archaeological field investigation involving the removal of human skeletal remains or associated artifacts from any unmarked human burial regardless of age of an archaeological site and regardless of ownership without first receiving a permit from the Director.

B. Where unmarked burials are not part of a legally chartered cemetery, archaeological excavation of such burials pursuant to a permit from the Director shall be exempt from the requirements of §§ 57-38.1 and 57-39. However, such exemption shall not apply in the case of human burials within formally chartered cemeteries that have been abandoned.

C. The Department shall be considered an interested party in court proceedings considering the abandonment of legally constituted cemeteries or family graveyards with historic significance. A permit from the Director is required if archaeological investigations are undertaken as a part of a court-approved removal of a cemetery.

D. The Board shall promulgate regulations implementing this section that provide for appropriate public notice prior to issuance of a permit, provide for appropriate treatment of excavated remains, the scientific quality of the research conducted on the remains, and the appropriate disposition of the remains upon completion of the research. The Department may carry out such excavations and research without a permit, provided that it has complied with the substantive requirements of the regulations promulgated pursuant to this section.

E. Any interested party may appeal the Director's decision to issue a permit or to act directly to excavate human remains to the local circuit court. Such appeal must be filed within fourteen days of the Director's decision.

1989, c. 656.

§ 10.1-2306. Violations; penalty.

It shall be unlawful to intentionally deface, damage, destroy, displace, disturb or remove any object of antiquity on any designated state archaeological site or state-controlled land.

Any person who violates this section shall be guilty of a Class 1 misdemeanor.

1977, c. 424, § 10-150.10; 1988, c. 891, § 10.1-906; 1989, c. 656.

Chapter 24 - VIRGINIA HISTORIC PRESERVATION FOUNDATION [Repealed]

§§ 10.1-2400 through 10.1-2404. Repealed.

Repealed by Acts 1999, c. 558, effective January 1, 2003.

Chapter 24.1 - HISTORIC PRESERVATION TRUST FUND

§ 10.1-2404.1. Establishment of Historic Preservation Trust Fund.

The Board of Trustees of the Virginia Historic Preservation Foundation and the Director of the Department of Historic Resources are authorized on behalf of the Commonwealth to enter into a trust agreement with the Association for the Preservation of Virginia Antiquities, whereby the Association for the Preservation of Virginia Antiquities shall be trustee and the Commonwealth shall be beneficiary. The Board of Trustees of the Virginia Historic Preservation Foundation is authorized to create a trust fund, to be known as the Historic Preservation Trust Fund, known hereafter as the "Trust Fund," by transferring all of the assets of the Virginia Historic Preservation Revolving Fund to the Association for the Preservation of Virginia Antiquities, as Trustee of the Trust Fund, including its cash, notes, mortgages, other securities, real estate and all its other assets, to be administered as follows:

1. The Trustee shall serve without compensation;

2. The Trust Fund shall be administered and managed by the Property Committee of the Association for the Preservation of Virginia Antiquities;

3. The Director of the Department of Historic Resources, or his designee, shall serve as a voting member of the Property Committee of the Association for the Preservation of Virginia Antiquities on all questions concerning properties to be acquired and sold by the Trust Fund;

4. The Trust Fund shall be used for the sole purpose of preserving properties listed or eligible for listing on the Virginia Landmarks Register through the acquisition of such properties, or interests therein, the donation of a perpetual preservation easement on such properties to the Board of Historic Resources, and the subsequent resale of properties, or interests therein, thus protected to appropriate individuals, corporations, partnerships, associations or other legal entities, or the resale or transfer to appropriate public agencies, when, in the discretion of the Trustee, such action is the best feasible means of protecting such properties from an identifiable threat of destruction or from the loss of those qualities for which they were designated or eligible to be designated as landmarks by the Board of Historic Resources; and

5. The Trust Fund shall be operated as a revolving fund and all proceeds from the resale of properties, and any income which may accrue on the trust properties, shall be returned to and deposited in the Trust Fund.

The terms, conditions and form of the trust agreement shall be reviewed and approved by the Governor and the Attorney General.

1999, c. 558.

§ 10.1-2404.2. Operations of fund; termination.

A. The Trust Fund shall consist of the property received pursuant to § 10.1-2404.1 and any gifts, grants, or appropriations made to the Trust Fund. Gifts and bequests of money, securities, and other property to the Trust Fund, and the income therefrom, shall be deemed to be gifts to the Commonwealth and therefore exempt from all state and local taxes. Any income earned from gifts, bequests, rent, securities, and other property of the Trust Fund shall be the property of the Trust Fund. Any gifts received by the Virginia Historic Preservation Foundation while the Association for the Preservation of Virginia Antiquities is administering the Trust Fund, as well as any income which may accrue thereon, shall be deposited in the Trust Fund within ninety days of receipt.

B. By November 1 of each year, the Association for the Preservation of Virginia Antiquities shall submit a copy of its audited financial statement to the Director of the Department of Historic Resources and to the Attorney General.

C. Prior to January 1, 2003, the Board of Trustees of the Virginia Historic Preservation Foundation is authorized to review the operation of the Trust Fund. If it finds that such operation is not fulfilling the requirements of the trust agreement, it may recommend to the Governor that the trust agreement with the Association for the Preservation of Virginia Antiquities be terminated. If the Governor finds that such termination is in the best interest of the Commonwealth, he may direct the Association for the Preservation of Virginia Antiquities to reconvey all the assets of the Trust Fund to the Virginia Historic Preservation Foundation.

D. On and after January 1, 2003, if the Fund has not been reconveyed to the Virginia Historic Preservation Foundation, (i) the Foundation shall cease to exist and its minutes and any remaining assets shall become the property of the Department of Historic Resources and (ii) the Attorney General shall have the authority to take legal action on behalf of the Commonwealth to enforce the terms of the trust agreement established under § 10.1-2404.1.

1999, c. 558.

Chapter 25 - VIRGINIA ENVIRONMENTAL EMERGENCY RESPONSE FUND

§ 10.1-2500. Virginia Environmental Emergency Response Fund established.

A. There is hereby established the Virginia Environmental Emergency Response Fund, hereafter referred to as the Fund, to be used (i) for the purpose of emergency response to environmental pollution incidents and for the development and implementation of corrective actions for pollution incidents, other than pollution incidents addressed through the Virginia Underground Petroleum Storage Tank Fund, as described in § 62.1-44.34:11 of the State Water Control Law; (ii) to conduct assessments of potential sources of toxic contamination in accordance with the policy developed pursuant to § 62.1-44.19:10; and (iii) to assist small businesses for the purposes described in § 10.1-1197.3.

B. The Fund shall be a nonlapsing revolving fund consisting of grants, general funds, and other such moneys as appropriated by the General Assembly, and moneys received by the State Treasurer for:

1. Noncompliance penalties assessed pursuant to § 10.1-1311, civil penalties assessed pursuant to subsection B of § 10.1-1316, and civil charges assessed pursuant to subsection C of § 10.1-1316.

2. Civil penalties assessed pursuant to subsection C of § 10.1-1418.1, civil penalties assessed pursuant to subsections A and E of § 10.1-1455, and civil charges assessed pursuant to subsection F of § 10.1-1455.

3. (For contingent expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Civil charges assessed pursuant to subdivision 8d of § 62.1-44.15 and civil penalties assessed pursuant to subsection (a) of § 62.1-44.32, excluding assessments made for violations of Article 9 (§ 62.1-44.34:8 et seq.) or 10 (§ 62.1-44.34:10 et seq.), Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

3. (For contingent effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Civil charges assessed pursuant to subdivision (8d) of § 62.1-44.15 and civil penalties assessed pursuant to subsection (a) of § 62.1-44.32, excluding assessments made for violations of Article 2.3 (§ 62.1-44.15:24 et seq.), 2.4 (§ 62.1-44.15:51 et seq.), 2.5 (§ 62.1-44.15:67 et seq.), 9 (§ 62.1-44.34:8 et seq.), or 10 (§ 62.1-44.34:10 et seq.) of Chapter 3.1 of Title 62.1, or a regulation, administrative or judicial order, or term or condition of approval relating to or issued under those articles.

4. Civil penalties and civil charges assessed pursuant to § 62.1-270.

5. Civil penalties assessed pursuant to subsection A of § 62.1-252 and civil charges assessed pursuant to subsection B of § 62.1-252.

6. Civil penalties assessed in conjunction with special orders by the Director pursuant to § 10.1-1186 and by the Waste Management Board pursuant to subsection G of § 10.1-1455.

1991, c. 718; 1992, c. 812; 1997, cc. 624, 850; 1998, c. 837; 2000, cc. 17, 1043; 2016, cc. 68, 758.

§ 10.1-2501. Administration of the Fund.

All moneys received by the State Treasurer for the civil penalties and civil charges referred to in § 10.1-2500, and all reimbursements received under § 10.1-2502 shall be and hereby are credited to the Fund. Interest earned on the Fund shall be credited to the Fund. The Fund shall be established on the books of the State Comptroller. Any moneys remaining in the Fund at the end of the biennium shall not revert to the general fund but shall remain in the Fund.

1991, c. 718; 1992, c. 887.

§ 10.1-2502. Disbursements from the Fund; transfer of funds to the Small Business Environmental Compliance Assistance Fund.

The disbursement of moneys from the Fund shall be made by the State Comptroller at the written request of the Director of the Department of Environmental Quality. The Director shall have the authority to access the Fund for up to $100,000 per occurrence as long as the disbursement does not

exceed the balance for the agency account. If the Director requests a disbursement in excess of $100,000 or an amount exceeding the remaining agency balance, the disbursement shall require the written approval of the Governor. The Department of Environmental Quality shall develop guidelines which, after approval by the Governor, determine how the Fund can be used for the purposes described herein.

Disbursements from the Fund may be made for the purposes outlined in § 10.1-2500, including, but not limited to, personnel, administrative, and equipment costs and expenses directly incurred by the above-mentioned agencies or by any other agency or political subdivision, acting at the direction of one of the above-mentioned agencies, in and for preventing or alleviating damage, loss, hardship, or suffering caused by environmental pollution incidents.

The agency shall promptly seek reimbursement from any person causing or contributing to an environmental pollution incident for all sums disbursed from the Fund for the protection, relief and recovery from loss or damage caused by such person. In the event a request for reimbursement is not paid within sixty days of receipt of a written demand, the claim shall be referred to the Attorney General for collection. The agency shall be allowed to recover all legal and court costs and other expenses incident to such actions for collection.

In any year in which the Fund balance exceeds two million dollars, the Director may transfer such excess amount to the Small Business Environmental Compliance Assistance Fund established pursuant to § 10.1-1197.2.

1991, c. 718; 1992, c. 887; 1997, cc. 624, 850.

§ 10.1-2503. Virginia Offshore Energy Emergency Response Fund established.

A. There is hereby created in the state treasury a special nonreverting fund to be known as the Virginia Offshore Energy Emergency Response Fund, hereafter referred to as "the Fund," which shall be administered by the Director of the Department of Environmental Quality. The Fund shall be established on the books of the Comptroller. All amounts designated for deposit to the Fund from revenues and royalties paid to the Commonwealth as a result of offshore natural gas and oil drilling or exploration 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. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon written request of the Director of the Department of Environmental Quality. Moneys in the Fund shall be used solely for the purposes stated in subsection B.

B. The Director of the Department of Environmental Quality shall use moneys in the Fund solely for the purposes of emergency preparation, emergency response, emergency environmental protection, or mitigation associated with a release of liquid hydrocarbons or associated fluids directly related to offshore energy exploration, development, production, or transmission.

C. The Director of the Department of Environmental Quality shall have the authority to access the Fund for up to $500,000 per occurrence as long as the disbursement does not exceed the balance for the agency account. If the Director of the Department of Environmental Quality requests a disbursement in excess of $500,000 or an amount exceeding the remaining agency balance, the disbursement shall require the written approval of the Governor. The Department of Environmental Quality shall develop guidelines that, after approval by the Governor, determine how the Fund can be used for the purposes described herein.

D. Disbursements from the Fund may be made for the purposes outlined in subsection B, including personnel, administrative, and equipment costs and expenses directly incurred by the Department of Environmental Quality or by any other agency or political subdivision, acting at the direction of the Department of Environmental Quality, in and for preventing or alleviating damage, loss, hardship, or suffering caused by a release of liquid hydrocarbons or associated fluids directly related to offshore energy exploration, development, production, or transmission.

E. The Department of Environmental Quality shall promptly seek reimbursement from any person causing or contributing to such a release of liquid hydrocarbons or associated fluids for all sums disbursed from the Fund for protection, relief, or recovery from loss or damage caused by such person. In the event a request for reimbursement is not paid within 60 days of receipt of a written demand, the claim shall be referred to the Attorney General for collection. The agency shall be allowed to recover all legal and court costs and other expenses incident to such actions for collection.

2014, c. 293.

Chapter 26 - INVASIVE SPECIES COUNCIL [Repealed]

§§ 10.1-2600 through 10.1-2609. Expired.

Expired.