

**REPORT OF THE
VIRGINIA CODE COMMISSION ON**

**The Revision of Title 10
of the Code of Virginia**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



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Report of the
Virginia Code Commission
on
The Revision of Title 10 of the Code of Virginia
to
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1988

TO: The Honorable Gerald L. Baliles
and
The General Assembly of Virginia

House Joint Resolution No. 211 of the 1987 Acts of Assembly directed the Virginia Code Commission to conduct a study of Title 10 of the Code of Virginia and report its findings in the form of a recodification of the title to the Governor and the General Assembly of Virginia. The study resolution came about because of the reorganization of the Department of Conservation and Historic Resources. As the result of legislation enacted during the 1984 General Assembly Session, the Department of Conservation and Economic Development was divided into the following three agencies: the Department of Conservation and Historic Resources, the Department of Economic Development and the Department of Mines, Minerals and Energy. Entities that had been Commissions, such as the Historic Landmarks Commission and the Soil and Water Conservation Commission, became part of the Department of Conservation and Historic Resources. In 1986 the Division of Forestry within the Department of Conservation and Historic Resources became a separate Department and in 1987 the Division of Litter Control was moved from the Department of Conservation and Historic Resources to the Department of Waste Management.

In accordance with the mandate, the study has been completed. The result is a recodification of Title 10 into a new Title 10.1. Proposed Title 10.1 is divided into two subtitles, the first subtitle deals exclusively with activities administered by the Department of Conservation and Historic Resources; the second subtitle deals with environmental and conservation activities administered by other entities.

The title has been significantly reorganized so that all provisions relating to a specific program will be in one place. The Commission has rewritten and combined sections or parts of sections to clarify provisions and to eliminate archaic or redundant language and obsolete provisions. References to legislative policy and purpose were deleted or rewritten as specific duties. Drafting notes follow each section in proposed Title 10.1 and explain the changes. Changes made by the Code Commission in the revision of Title 10 include:

- The Soil Conservation Districts Law was moved from Title 21 to proposed Title 10.1 because it is administered by the Department of Conservation and Historic Resources.
- The Flood Damage Reduction Act and the Dam Safety Act were moved from Title 62.1 to proposed Title 10.1 because they are administered by the Department of Conservation and Historic Resources. The Virginia Beach Erosion Council was also moved from Title 21 to the new title because of its subject matter.
- The Cave Board was moved from Title 9 and included in the Cave Protection Act.
- §§ 27-5.2, 25-5.4, 27-54.1 through 27-54.5, and 56-426.1, relating to fire protection, have been moved to Chapter 11, Forest Resources and Department of Forestry, of proposed Title 10.1
- The Southeast Interstate Low-Level Radioactive Waste Management Compact was moved from Title 32.1
- Existing §§ 10-13, 10-14 and 10-15, which deal with state advertising funds, were moved to Chapter 32.1 (§ 2.1-548.6) of Title 2.1, dealing with the Department of Economic Development.
- Because of the difficulty of distinguishing the Director and staff of the State Air Pollution Control Board from the policy board which is also known as the State Air Pollution Control Board, the name of the administrative agency was changed to the "Department of Air Pollution Control."
- Provisions regarding the Virginia Fuel Conversion Authority were repealed because the Authority is no longer active.
- Provisions regarding the Advisory Council on the Virginia Economy were repealed because the Council has not functioned for many years.

The outline of proposed Title 10.1 and the revision of Title 10 of the Code of Virginia follow this text as Appendix I. Tables following the revision in Appendix II cross-reference the sections of Title 10 with equivalent sections in proposed Title 10.1 and vice versa. Appendix III lists additional sections in the Code of Virginia which must be amended, added or repealed due to the recodification.

The members of the Commission appreciate the time and effort of those who participated in this study, especially the staff of the agencies involved.

The Virginia Code Commission recommends that the General Assembly enact legislation at the 1988 Session to effectuate this revision.

Respectfully submitted,

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TITLE 10.1
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Conservation and Historic Resources

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TITLE 10.1
CONSERVATION
SUBTITLE I
ACTIVITIES ADMINISTERED BY THE
DEPARTMENT OF CONSERVATION AND HISTORIC RESOURCES.
CHAPTER 1.
GENERAL PROVISIONS.

Article 1.

Department of Conservation and Historic Resources.

§ 10.1-100. *Definitions.*—As used in this subtitle, unless the context requires a different meaning:

“Department” means the Department of Conservation and Historic Resources.

“Director” means the Director of the Department of Conservation and Historic Resources.

Drafting Note: The “definitions” section is added for reference to the listed terms throughout the subtitle.

~~§ 10-252 10.1-101 . Creation of Department continued ; appointment of Director.— There is hereby created a The Department of Conservation and Historic Resources 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. 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.~~

Whenever in this title and in the Code of Virginia, reference is made to a division, agency, commission, or foundation hereinafter transferred to this Department, it shall mean the Department of Conservation and Historic Resources.

Drafting Note: Section 2.1-41.2 requires confirmation of agency heads by the General Assembly. The last sentence was removed because it addressed the 1984 reorganization.

~~§ 10-252.1 10.1-102 . Powers and duties of Director.—The Director of the Department of Conservation and Historic Resources , under the direction and control of the Governor, shall exercise such the powers and perform such the duties as that are conferred or imposed 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. The Director, before entering upon the discharge of his duties, shall take an oath that he will faithfully and honestly execute the duties of his office during the continuance therein .~~

Drafting Note: Section 49-1 requires all state officers to take an oath, so the last sentence of this section is stricken.

~~§ 10-253 10.1-103 . Establishment of divisions; division heads Organization of the Department . —The Director shall establish in the Department of Conservation and Historic Resources the following divisions through which the several functions of the Department and the corresponding powers and duties shall may be exercised and discharged: Division of Soil and Water Conservation, Division of Parks and Recreation, the Division of Historic Landmarks, and such other divisions as may be necessary . The Director shall appoint competent persons to direct the work various functions and programs of such the Department divisions , and may delegate to the head of any such division any of the powers and duties relating to the work of the division that may be conferred or imposed by law upon the Director him .~~

Drafting Note: No change in the law.

~~§ 10-254 10.1-104 . General powers Powers of the Department.— A . The Department shall have the following general powers, all of which ; with the approval of the Director of the Department, may be exercised by a unit of the Department with respect to matters assigned to that organizational entity delegated by the Director :~~

1. ~~Employ To employ such personnel as may be required to carry out the purposes of this chapter those duties conferred by law ;~~

2. ~~Make~~ *To 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~~ *political* subdivisions of the Commonwealth;

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

4. ~~Prescribe~~ *To prescribe* rules and regulations necessary or incidental to the performance of duties or execution of powers conferred ~~under this chapter by law~~; and

5. ~~Do all~~ *To perform* acts necessary or convenient to carry out the ~~purposes of this chapter~~ *duties conferred by law*.

B. Pursuant to the Administrative Process Act (§ 9-6.14:1 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.

Drafting Note: Proposed subsection B is composed of existing §§ 10-21.3:5 and 10-21.3:4.

Article 2.

Board of Conservation and Historic Resources.

~~§ 10-3~~ *10.1-105*. Board of Conservation and Historic Resources.—There shall be a Board of Conservation and Historic Resources ; hereafter in this title ~~sometimes called chapter referred to as the Board~~. The Board shall consist of twelve members ~~to be appointed by the Governor subject to confirmation by the General Assembly, if in session when such appointments are made, at that session, or if not in session, at the next succeeding session. Persons so appointed shall hold office at the pleasure of the Governor for for four-year terms as follows: of the initial appointments, two shall be for terms of one year, two shall be for terms of two years, two shall be for terms of three years, and three shall be for terms of four years each, and thereafter all appointments shall be for terms of four years each~~. No person shall be eligible to succeed himself as a member of the Board ~~for more than one term~~ *serve more than two consecutive full terms*. Any vacancy shall be filled by the Governor for the unexpired term. *Board members shall serve at the pleasure of the Governor*. In making appointments, the Governor shall endeavor to select appointees of such qualifications and experience that the membership of the Board shall include persons suitably qualified to consider and act upon the various special interests and problems of importance related to the programs of the Department. The Board may appoint subcommittees of not less than three ; ~~its members to consider and deal with such special interests and problems related to programs of the Department.~~

Drafting Note: Section 2.1-41.2 requires confirmation of board members by the General Assembly. Language regarding initial appointments is no longer necessary.

~~§ 10-4~~ *10.1-106*. Chairman and secretary *Officers; meetings; quorum*.—The Board ; ~~under rules adopted by itself~~, shall elect one of its members chairman, and may elect a secretary, who need not be a member of the Board.

~~§ 10-5. Meetings; quorum.~~—The Board shall meet at least ~~once in every sixty days, and on the call of the chairman ; when in his opinion additional meetings are expedient or necessary~~. Seven members shall constitute a quorum of the Board ~~for all purposes~~.

Drafting Note: Due to the now advisory nature of the Board, meetings are not required as frequently and it is not necessary to specify how often the Board should meet. Current §§ 10-4 and 10-5 were combined.

~~§ 10-7. Oath of Director and members of the Board.~~—The Director and each member of the Board shall, ~~before entering upon the discharge of his duties, take an oath that he will faithfully and honestly execute the duties of his office during his continuance therein.~~

Drafting Note: § 10-7 is stricken since § 49-1 et seq. stipulates requirements for oaths and affirmations.

~~§ 10-11. Other state officers may be appointed.~~—The Director, in the appointment of officers, agents and employees may, with the approval of the Governor, designate such other state officers, or officers in state-supported institutions as may indicate their willingness to accept such appointment; ~~in which case such officers, agents and employees shall serve without additional compensation, other than actual expense incurred in the performance of their duties.~~

Drafting Note: § 10-11 appears unnecessary since proposed § 10.1-104 lists the general powers of the Department and Director.

§ 10-12.10.1-107. General powers and duties of the Board.—The Board of Conservation and Historic Resources shall advise the Governor and the Director of the Department of Conservation and Historic Resources on activities of the Department. *Upon the request of the Governor, the Board may shall* institute investigations and make recommendations to the Governor upon his request .

Drafting Note: This section is revised to require the Board to act upon the request of the Governor.

§ 10-12.2. Hearings.—The Board shall also have the power and authority to hear and determine all questions arising out of the official acts of the employees of the Department, unless otherwise expressly provided, and to hear and determine such other matters as it may by law be directed or authorized to hear and determine.

§ 10-12.3. Witnesses.—In any matter before it for hearing and determination the Board may compel the attendance of all needed witnesses in like manner as a circuit court, save the Board shall not have the power of imprisonment. In taking evidence the chairman or any member of the Board shall have the power to administer oaths to witnesses.

Drafting Note: The powers listed in §§ 10-12.2 and 10-12.3 are no longer exercised by the Board. The Board is now advisory in nature due to reorganization changes implemented through Chapter 750 of the 1984 Acts of Assembly.

§ 10-13. Advertising advantages of Commonwealth.—The Director of the Department of Economic Development shall have control of the expenditure of any state advertising funds, and shall have control of and expend such funds for advertising the resources and advantages of the Commonwealth and in the promotion of tourism in such manner as he may deem best. In addition to other expenditures, the Director may expend such funds for the purchase or lease of lands or buildings outside the Commonwealth and for the construction thereon of tourist information stations. The Director shall cooperate so far as it may be practicable and expedient with other organizations in the Commonwealth engaged in similar or related work, and shall have full power and authority to acquire by gift or transfer property or funds to be so expended.

Drafting Note: Relocated to § 2.1-548.8:1.

§ 10-14. Expenditure of publicity funds available to other state agencies.—The Governor may, at any time, direct that any appropriation or other fund available to any department, officer, board, commission, or other agency of the Commonwealth for publicity or advertising purposes be transferred to the Department of Economic Development, or direct that it be expended in such manner as he may deem best for the general good of the Commonwealth and the special good of the agency concerned.

Drafting Note: Relocated to § 2.1-548.8:2.

§ 10-14.1. Information centers at the entrance of federal interstate highways into Commonwealth.—The Department of Economic Development is hereby authorized to expend out of funds allocated to it for state advertising and promotion, such funds as are necessary to construct, maintain and operate appropriate information centers, located at the entrance into this Commonwealth of the several federal interstate highways.

Drafting Note: Relocated to § 2.1-548.8:3.

General Drafting Note: It appears that the above three sections, 10-13, 10-14 and 10-14.1, were left in Title 10 as an oversight from previous reorganization changes. They will be relocated to Chapter 32.1 of Title 2.1, which sets out provisions concerning the Department of Economic Development.

§ 10-15. Exemption from taxation.—All property formerly vested in the former Virginia Conservation Commission and vested in the Commonwealth of Virginia, Department of Conservation and Development and property which will be vested in the Department of Conservation and Historic Resources, and all other property so vested in the Commonwealth for the Department, and all income of or for the use of the Department, from whatever source, shall be exempt from taxation, state and local.

Drafting Note: Article I, § 6(a)(1) of the Virginia Constitution exempts all state property from taxation.

§ 10-16. Payments to United States on sale of certain public lands or products thereof.—Chapter 259 of the Acts of 1936, approved March 25, 1936, codified as § 2542a of the Michie Code 1942, providing that upon the sale of certain lands belonging to the State or any products thereof, there shall be paid to the United States a certain portion of any profit derived by the

State as a result of work done pursuant to the act of Congress therein described, is continued in effect.

Drafting Note: § 10-16 appears to be obsolete. It continues § 2542(a) of the Michie Code 1942, which provides that the U.S. should receive as reimbursement a portion of any profits resulting from sales of state lands upon which improvements were made by the U.S. work programs during the early 1930's.

~~§ 10-17. Duties of Attorney General.—Upon the request of the Director of the Department of Conservation and Historic Resources, approved by the Governor, it shall be the duty of the Attorney General to act in his official capacity for and on behalf of the Director or Department in any matter or proceeding wherein his services may be requested, and to furnish to the Director his written advice and opinion touching any matter in which the Director or Department may be properly interested.~~

Drafting Note: § 10-17 restates the standard duties of the Attorney General as set forth in § 2.1-117 et seq.

Article 3.

Disposition of Department Lands.

~~§ 10-17.113 10.1-108 . Definitions.— For the purposes of As used in this chapter article , the following words shall have the meanings ascribed to them by this section unless the context requires a different meaning :~~

~~A . “Environment” means the natural, scenic , scientific and historic attributes of the Commonwealth.~~

~~B. “Department” means the Department of Conservation and Historic Resources.~~

~~D . “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.~~

~~E . “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 chapter article , the word mineral shall not include timber.~~

~~E. “Director” means the Director of Conservation and Historic Resources.~~

~~F. “Board” means the Board of Conservation and Historic Resources.~~

~~G. “Person” means any private person, corporation, association, governmental agency, public authority or political subdivision of the Commonwealth.~~

Drafting Note: The stricken definitions in § 10-17.113 are either already in the general title definitions or stated elsewhere in the Code of Virginia. DCHR requested that the word scientific be added to the definition of environment because they are authorized to acquire lands with scientific attributes.

~~§ 10-17.114 10.1-109 . Conveyance or lease of lands and other properties ; easements to public service corporations .— A . The Director is hereby authorized and empowered , 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 in accordance with § 2.1-484 and the provisions of this chapter article , to convey, lease or demise to any person for consideration and on terms as the Board may prescribe , 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 ; or ; (ii) any lands over which if the Department has supervision and control, or any part or parts thereof or right or interest therein of such lands; or (iii) any right, interest or privilege with respect thereto to such lands . The Director, subject to the consent and approval of the Governor, may renew any such lease, contract or agreement in effect on December 31, 1979, without the consent and approval of the General Assembly. Whenever land is acquired by purchase or otherwise for public recreational recreation and conservation purposes under the administration of the Division of Parks and Recreation Department , the Director is authorized ; subject to the consent and approval of the Governor following review as to form and content by the Attorney General and in accordance with § 2.1-484 and the provisions of this chapter, to lease the land or any portion thereof of it to the owner or owners from whom the land is acquired upon the terms and conditions as may be 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 ~~one or more or for an indefinite number of~~ 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. ~~The consent and approval of the General Assembly shall not be required for lease renewals.~~ 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 ~~thereof~~, the Director may immediately terminate the lease.

Drafting Note: Existing § 10-17.114 has been divided into four new sections. The various subsections of existing § 10-17.114 describe a variety of powers relating to leases and contracts on departmental lands. References to consent by the Board are eliminated since its authority has been changed to an advisory capacity. This section is subsection A of § 10-17.114. The reference to December 31, 1979, regarding renewals was stricken. The reference to § 2.1-484 was stricken because this duty already exists in Title 2.1.

~~B.~~ § 10.1-110. *Easements to public service corporations.*— The Director is ~~further authorized and empowered~~, subject to the consent and approval of the Governor following review as to form and content by the Attorney General ~~and in accordance with § 2.1-484~~, to grant to any governmental agency, political subdivision, public utility company, public service corporation, public service company or authority for consideration ~~and on terms as the Board may prescribe~~, 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 ~~of any kind or character~~ 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 ~~one or more or for an indefinite number of~~ 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 ~~thereof~~, 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.

Drafting Note: This section is subsection B of existing § 10-17.114. The reference to § 2.1-484 was stricken because this duty already exists in Title 2.1.

~~C.~~ § 10.1-111. *Removal of minerals.*— The Director, with the approval of the ~~Board Governor~~, is ~~empowered 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 ~~the forestry reservations~~ *Departmental lands* whenever it shall be made to appear ~~appears~~ to the ~~Board~~ Director that it would be ~~for~~ in the best interest of the Commonwealth to ~~make disposition~~ dispose of these minerals; ~~but before~~. *Before* any deed, contract or lease is made or executed, the same it shall be approved *as to form* by the ~~Governor~~ 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 ~~as he~~ that the Director may fix for the faithful performance ~~on his part~~ of all the conditions and covenants of the lease, contract or deed. The proceeds arising from any contract, deed, or lease; ~~except as provided in subsection (5) of § 10-33~~, shall be paid deposited into the state treasury; ~~to be held and used for the same purpose as the proceeds from the sale of trees and timber, and to be paid out in like manner to the credit of the Conservation Resources Fund established in § 10.1-202.~~

Drafting Note: This section is subsection C of existing § 10-17.114. The requirement for Board approval was removed since the Board is now advisory. Approval of the Governor was substituted.

~~D.~~ § 10.1-112. *Capital improvement projects.*— The Director; ~~with the approval of the Board~~, is ~~further authorized and empowered~~ 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 ~~in accordance with the provisions of subsection A of § 2.1-504.1~~.

Any ~~such~~ 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 (§ 11-35 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 all the conditions and covenants of such lease or contract.

Such lease or contract, with an initial term not exceeding twenty-five years, shall be subject to terms, conditions, and limitations as the Board or 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 subsection shall be paid into the revolving fund described *Conservation Resources Fund established in § 10-21-1 10.1-202.*

Drafting Note: This section is subsection D of existing § 10-17.114. The requirement for Board approval was removed since the Board is now advisory.

§ 10.1-113. Sale of trees.—For the purpose of 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 \$10,000, 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 shall be paid into the Conservation Resources Fund established in § 10.1-202.

Drafting Note: The addition of this section on Sale of Trees is to parallel similar powers held by the State Forester.

CHAPTER 2.

PARKS AND RECREATION.

Article 1.

State Parks.

§ 10-18. Division of Parks and Recreation; Commissioner.—In the Department of Conservation and Historic Resources there shall be a Division of Parks and Recreation, the head and chief executive officer of which shall be the Parks and Recreation Commissioner. The Commissioner shall be appointed by the Director.

§ 10-19. Powers and duties of Commissioner.—The Parks and Recreation Commissioner shall exercise such of the powers and perform such of the duties, in relation to state parks, historic sites, museums, and similar projects, conferred or imposed upon the Director by the provisions of this title or other provisions of law, including powers and duties involving discretion, as may be delegated to him by the Director. The Commissioner shall also exercise other powers and duties as may be lawfully delegated to him, and the powers and duties as may be conferred upon him by law.

Drafting Note: § 10-18 and § 10-19 are proposed to be stricken since the designation of a separate division within the Department and the assignment of powers to that division can be accomplished according to the general powers in proposed Chapter 1.

§ 10.1-200. Duties related to parks and outdoor recreation; additional powers.—To facilitate and encourage the public use of parks and recreational areas, 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.*

Drafting Note: The powers and duties listed in proposed § 10.1-200 are from existing §§ 10-21.3:3 and 10-21.3:5. They are combined into one section for more convenient reference.

~~§ 10-21.10.1-201~~ . *Lands Acquisition of lands of scenic beauty, recreational utility or historical interest.—A. Acquisition.* - The Director of the Department of Conservation and ~~Historic Resources~~ shall have full power and authority *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, ~~remarkable phenomena~~ *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. Such power and authority of Any acquisition shall be within the limits of any appropriation which may be 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. ~~The Director shall have no power to purchase or contract for the purchase of any property beyond the amount contained in such appropriation or provided by such voluntary gifts or contributions .~~

B. Eminent domain proceedings.— The Director shall have the power *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 the laws relating to the exercise of such right and power, being Chapter 1.1 (§ 25-46.1 et seq.) of Title 25 .

C. Report of Attorney General upon title.— Before any such property shall be *is* purchased or acquired by condemnation, the Director may ~~call upon~~ *request* the Attorney General to examine and ~~render~~ a report upon the title ~~thereto of the property~~ , and it shall be the duty of the Attorney General to make such examination and report at the request of the Director .

D. Leasing property or placing in custody of others.— 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 ~~such~~ *the* property in the custody of the person ; ~~persons;~~ or association making such gifts or contributions, or lease the property to such person ; ~~persons;~~ or association, for a period not to exceed ninety-nine years, upon terms and conditions approved by the Governor, which will best preserve and maintain such property ~~or properties~~ for the use, observation, education, health or pleasure of the people of Virginia.

Drafting Note: The last sentence of subsection A is removed because it says the same thing as the sentence preceeding it. "Biological significance" was added at the request of DCHR. DCHR wants to ensure that they have authority to acquire those types of lands. "Remarkable phenomena" was stricken because it is repetitive.

~~§ 10-21.2~~ 10.1-202 . *Gifts and funds for state parks to constitute revolving fund Conservation Resources Fund .—*Gifts of money, entrance and concession fees, and all funds accruing from, on

account of, or to the use of state parks of any state park acquired or held by the Commonwealth ; other than regular or specific appropriations made by the General Assembly, shall be deemed, unless otherwise specifically provided, to constitute a revolving fund the Conservation Resources Fund. The Fund shall be under the direction and control of the Director ; which and may be expended in for the conservation and development of state parks or of any state park acquired or held by the Commonwealth ; and no unexpended part of such fund . Unexpended portions of the Fund shall not revert to the state treasury at the close of any fiscal year until and unless specific provision therefor is made specified by an act of the General Assembly.

Drafting Note: DCHR suggests referring to the revolving fund authorized in proposed § 10.1-202 as the Conservation Resources Fund.

~~§ 10-21-3-1~~ 10.1-203 . Establishment, protection and maintenance of Appalachian Trail ; statewide system of trails .— (a) The Commonwealth of Virginia, through the Division of Parks and Recreation of the Department of Conservation and Historic Resources, hereinafter referred to as the Division, is authorized (1) to enter into written cooperative agreements with landowners, private organizations and individuals and (2) to 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 Division 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 Division land or rights in land for these purposes, on terms and conditions as agreed upon, or may enter into an agreement with the Division providing for the establishment and protection of the trail.

~~(b)~~ 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 the its natural scenic beauty thereof 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 ; provided, that . 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 provided further, that the Division Department may authorize use of the trail by motorized emergency vehicles. The Division 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 as that will not substantially interfere with the primary use of the trail ; and . 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 be construed to limit the right of the public to pass over existing public roads which are part of the trail, or to prevent the Division Department from performing work necessary for the purpose of forest fire prevention and control, insect, pest and disease control, and the removal of damage caused by natural disaster. The Division Department may enter into cooperative agreements with agencies of the federal government or with private organizations to provide for the maintenance of the trail. No 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.

~~(c)~~ In addition to the above, the § 10.1-204. Statewide system of trails.—A. The Department is authorized to enter into such agreements and to acquire interest 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 need 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.

This B. 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.

Each trail shall be limited to foot, horse or nonmotorized bicycle use, or a combination thereof, as deemed appropriate by the ~~Division~~ Department . ~~The use of motorized vehicles by the public shall be prohibited along any of the scenic, recreation or connecting trails.~~ This statewide system of trails may contain, at the discretion of the ~~Division~~ Department , camping sites, shelters, and related public-use and management facilities, which will not substantially interfere with the nature and purposes of the trails. ~~The use of motorized vehicles by the public shall be prohibited along any of the scenic, recreation or connecting trails. The provisions contained in paragraphs (a) and (b) of this section shall apply, mutatis mutandis, to the provisions of this paragraph.~~

Drafting Note: Reference is made to the "Department" rather than the Division since the Department actually has the primary authority over trails which may be delegated within the agency structure. Existing § 10-21.3:1 was divided into two sections because it deals with both the Appalachian Trail and the statewide system of trails. In proposed § 10.1-203 subsections A and B were interchanged.

~~§ 10-21.3:2~~ 10.1-205 . Management of False Cape State Park.—A. The Director of Conservation and Historic Resources shall adopt measures to be used by the Division of Parks and Recreation to safeguard the environment of False Cape State Park. These shall include, but not be limited to, the following:

1. Provisions shall be made to ensure that adequate drinking water supplies 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 shall be utilized ;

3. The Park shall be managed Adequate measures to protect , wherever practicable, so that nesting areas of sea turtles, beach nesting birds, peregrine falcons, and other endangered species are protected .

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

C. The ~~Board~~ 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 ~~Board~~ 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 ~~Division of Parks and Recreation of the Commonwealth~~ 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 ~~Division of Parks and Recreation~~ Department to travel

through the Park.

Drafting Note: Reference is made to the "Director" rather than the "Board" and reference is made to the "Department" rather than the "Division" since the primary authority over the park is vested with the Department.

~~§ 10-21.3:3. Additional duties of the Division of Parks and Recreation.—The Division of Parks and Recreation, hereinafter referred to as the Division, shall be the sole agency responsible for the administration of any funds made available to it. A purpose of the Division shall be, through the exercise of its powers and performance of its duties as set forth in this chapter, to create and put into effect a long range plan for the 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, and to facilitate and encourage the fullest public use thereof. The Division shall have the following additional duties:~~

~~1. To prepare, maintain and keep up-to-date a comprehensive plan for the development of outdoor recreational facilities of the Commonwealth;~~

~~2. To keep financial and other records relating to contracts and agreements with the United States or any appropriate agency thereof, and to furnish appropriate officials and agencies of the United States such reports and information as may be reasonably necessary to enable the officials and agencies to perform their duties under federal programs respecting outdoor recreation;~~

~~3. To coordinate its activities with and represent the interest of departments, commissions, boards, agencies, officers and institutions of the Commonwealth, or any political subdivision thereof or any Park Authority having interests in the planning, maintenance, improvement, protection and conservation of outdoor recreational facilities;~~

~~4. To study and appraise on a continuing basis the outdoor recreational needs of the Commonwealth and to assemble and disseminate information relative to outdoor recreation;~~

~~5. To establish and promote standards for outdoor recreational facilities;~~

~~6. To do such other things as are necessary and proper to effectuate the purposes of this chapter.~~

Drafting Note: Existing § 10-21.3:3 is stricken since its provisions have been merged with the provisions of existing § 10-21.3:5 and relocated into proposed § 10.1-200.

Article 2.

Outdoor Recreation.

~~§ 10-21.3:4 10.1-206 . Outdoor Recreation Advisory Committee continued as Outdoor Recreation Advisory Board; membership; expenses; duties.—A. Membership: The Outdoor Recreation Advisory Committee Board is continued and shall hereafter be known as the Outdoor Recreation Advisory Board . The Advisory Board shall be composed of nine members as follows: the Commissioner of the Division of Parks and Recreation a representative of the Department other than the Director , the Director of the Department of Housing and Community Development, the Executive Director of the Commission Department of Game and Inland Fisheries and the State Highway and Commonwealth Transportation Commissioner shall serve as ex officio members; and five members shall be appointed by the Governor from the Commonwealth at large subject to the confirmation of the General Assembly. Successors to members-at-large whose terms expire shall be appointed for terms of four years for four-year terms . All terms shall begin July 1. Appointments to fill vacancies occurring shall be for the unexpired term. The Commissioner of the Division of Parks and Recreation representative of the Department , or his designee, will shall serve as Secretary of the Advisory Board.~~

~~B. Expenses: Members-at-large shall be entitled to reimbursement for their expenses incurred while engaged in the discharge of their duties.~~

~~C. Duties: The Outdoor Recreation Advisory Board shall meet not less than twice each year, at any location it may designate, for the purpose of formulating recommendations to the Director of Conservation and Historic Resources concerning grant requests for grants pertaining to outdoor recreation as may be assigned to the Advisory Board and other matters applicable to this article.~~

The rules and regulations initially adopted, and as subsequently amended, by the Director of Conservation and Historic Resources for administration of this article shall have the effect of law, and any person violating such rule shall be guilty of a misdemeanor and punished as provided in § 18.2-11 of the Code of Virginia.

Drafting Note: Changes in proposed § 10.1-206 reflect recent organizational changes in the Department. Existing subsection B is stricken because § 14.1-52 provides for reimbursement while on state business. The penalty for violation of rules and regulations is relocated to subsection C of § 10.1-104.

§ 10-21.3:5. Powers.—In addition to other powers conferred by this article, the Director of Conservation and Historic Resources, hereinafter referred to as the Director, shall have the following powers:

1. Pursuant to the Administrative Process Act (~~§ 9-6.14:1 et seq.~~) of Title 9 of the Code of Virginia, the Director may from time to time make any rules not inconsistent with this chapter or the general laws of the Commonwealth as it shall deem necessary to carry out the purposes and provisions of this chapter, and from time to time it may alter, repeal or amend any of these rules;

2. To administer all funds available to the Director for carrying out the purposes of this chapter;

3. To disburse funds to any department, commission, board, agency, officer or institution of the Commonwealth, or any political subdivision thereof or any park authority for carrying out the purposes of this chapter;

4. To apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program respecting outdoor recreation, and in respect thereto, to enter into contracts and agreements with the United States or any appropriate agency thereof;

5. To prepare, maintain and keep up-to-date a comprehensive plan for the development of the outdoor recreational facilities of the Commonwealth;

6. To 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 in order to carry out the Director's powers and duties.

Drafting Note: Existing § 10-21.3:5 is stricken since its provisions have been merged with existing § 10-21.3:3 and relocated to § 10.1-200.

§ 10-21.3:6 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 ~~Division~~ *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.

Drafting Note: Division changed to Department.

§ 10-21.3:7 10.1-208 . Acquisition of property; making property available for agricultural and timbering uses, outdoor and recreational uses.—A. The Director is hereby authorized to acquire *by gift or purchase* (i) unrestricted fee simple title to tracts ; ~~to acquire by gift or purchase (i)~~ (ii) fee simple title to such land subject to reservation of *farming* rights ~~to use the land for farming or to reservation of timber rights therein, or (ii)~~ (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, either by gift or purchase, any real property or any interest therein, as the Director deems necessary for the obtaining of , ~~maintenance, improvement, protection and conservation of~~ *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 § 2.1-504.3 of the Code of Virginia .

Drafting Note: No change in the law.

§ 10-21.3:8. Duties of Commissioner with respect to recreational needs of citizens; cooperation of other agencies.—The Commissioner of the Division of Parks and Recreation shall have the

following duties with respect to the recreational needs of the citizens of the Commonwealth:

1. To study and develop recreational programs for state institutions, agencies and political subdivisions.

2. Upon request, to provide assistance to these institutions, agencies and subdivisions regarding the establishment and implementation of recreation programs.

3. To aid and advise in the use of existing state parks and similar recreational facilities with the needs of various state institutions.

4. To work with the appropriate state agencies to develop areas for multiple recreational use, to include, but not be limited to, such traditional uses as hunting, fishing, hiking, swimming and boating.

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

Drafting Note: Existing § 10-21.3:8 is proposed to be stricken since the general powers of the Department are described in proposed Chapter 1 and additional powers are specified in proposed § 10.1-200.

CHAPTER 3.

STATE PARK DEVELOPMENT REVENUE BOND ACT.

§ 10-99. Citation of chapter.—This chapter shall be known and may be cited as the “State Park Development Revenue Bond Act.”

Drafting Note: This section is being repealed because it is not necessary.

§ 10-100. § 10.1-300. Definitions.—As used in this chapter, the following words and terms shall have the following meanings unless the context requires a different meaning :

“Camping and recreational facilities” shall mean and embrace 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 appurtenant thereto, now under the control of the Department of Conservation and Historic Resources or acquired, constructed, enlarged or improved under the provisions of this chapter.

“Cost of camping and recreational facilities” shall include means the purchase price, the cost of construction, the cost of all lands, properties, rights, easements and franchises acquired which are deemed necessary for construction, enlargements or improvements, reserve funds for the payment of principal or interest on the bonds as may be deemed necessary or desirable , interest during construction of the enlargements or improvements, cost of engineering studies and estimates and of engineering data, engineering and legal expenses, cost of plans, specifications, surveys, estimates of cost and of revenues, expenses necessary or incident to for determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing and operation of projects any authorized project herein authorized .

“Department” shall mean the Department of Conservation and Historic Resources.

“Director” shall mean the Director of the Department of Conservation and Historic Resources.

Drafting Note: The stricken definitions are located in Chapter 1.

§ 10-101. § 10.1-301. General powers of Director.— ~~The~~ In addition to other powers conferred by law, the Director may, subject to the provisions of this chapter:

(1) 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) 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 first obtaining the consent of the Governor;

~~(3) Fix 3. Establish and collect fees and charges for the use of camping and recreational facilities;~~

~~(4) 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) 5. Make and enter into all contracts or agreements necessary or incidental to the execution of his powers under this chapter ; and to employ engineering, architectural and construction experts, brokers and such other employees as he may deem necessary and fix their compensation in accordance with law ;~~

~~(6) 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.~~

The powers and duties of the Director hereinabove enumerated in this section shall not be construed as a limitation of the Director's general powers or duties or in derogation of other powers now possessed by the Director and not in conflict with the provisions of this chapter.

Drafting Note: The powers delegated to the Director in existing § 10-101 are listed here since the powers relate specifically to the purpose of this chapter. The Director is given the authority to employ personnel in Chapter 1; therefore this provision is stricken in subdivision 5.

~~§ 10-102. § 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 such proceeds from any grant or contribution which may be made thereto pursuant to the provisions of this chapter.~~

Drafting Note: No change in the law.

~~§ 10-103. § 10.1-303. Revenue bonds ; Treasury Board to be issuing agent. ; form and requirements.— (1) Bond resolution; payment from special fund. A. The Director is hereby authorized to provide at one time or from time to time, 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 such the bonds shall be payable solely from the special fund herein provided in this chapter for such payment. All such bonds shall be issued and sold through the Treasury Board whose approval of each of the determinations and designations specified in subsection (2) B of this section shall be required.~~

~~(2) Date, rate of interest, maturity and medium of payment.—Such B. The revenue bonds shall be dated, shall bear interest such rate or rates as and be payable at times determined by the Director . or as determined in such manner as the Director may provide, including the determination by agents designated by the Director under guidelines established by him, payable at such time or times, The bonds shall mature at such time or times not exceeding no longer than thirty years from their date or dates, and may be made redeemable before maturity, at such a price or prices and under such terms and conditions as may be fixed established by the Director prior to the issuance of the bonds. The principal and interest of such bonds may be made payable in any lawful medium.~~

~~(3) Form and execution.— C. The Director shall determine the form of the bonds, including any attached interest coupons to be attached thereto , and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof , which may be at any bank or trust company within or without the Commonwealth . The bonds shall be signed by the Director and the State Treasurer and shall bear the lesser seal of the Commonwealth of Virginia or a facsimile thereof, and any attached coupons attached thereto 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 must shall be authenticated by a corporate trustee or other authenticating agent approved by the Director. In case If any officer whose signature appears on the bonds or coupons ceases to be such officer before delivery of such the bonds, such the signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery .~~

~~(4) Negotiability; exemption from taxation.— D. All revenue bonds issued under the provisions of this chapter shall have and are hereby declared to have, as between successive holders, 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.

~~(5) Coupon or registered bonds.~~ - 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.

Drafting Note: Existing § 10-103 (1) - (5) are set out as proposed § 10.1-303 since the provisions relate to the form and limitations of the bonds.

~~(6) Sale of bonds.~~ - § 10.1-304. *Sale and proceeds of revenue bonds; additional or temporary bonds.*—A. The Treasury Board as agent for the Director may sell ~~such~~ revenue bonds in ~~such~~ manner, at private or public sale ; and for such price and in the manner as they may determine it determines to be for in the best interests of the Commonwealth.

~~(7) Use of proceeds.~~ - B. The proceeds of ~~such~~ 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.

~~(8) Issuance of additional bonds.~~ - C. If the proceeds of the bonds of any issue ; by error of estimates or otherwise, are less than the cost of the camping and recreational facilities for the payment of which ~~such~~ the bonds are were issued, additional ~~bond~~ bonds may in like manner be issued to provide the amount of ~~such~~ the deficit ; . and unless Unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture hereinafter mentioned, 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 ~~such~~ the facilities.

~~(9) Disposition of surplus.~~ - D. If the proceeds of any bonds issued to pay the cost of camping and recreational facilities exceed the facilities cost thereof , the surplus shall be paid into the fund hereinafter provided for the payment of principal and interest of ~~such~~ the bonds.

~~(10) Temporary bonds.~~ - E. Prior to the preparation of definitive bonds, temporary bonds may be issued, under like similar restrictions, with or without coupons, exchangeable for subsequently issued definitive bonds upon the issuance of the latter .

~~(11) Replacement of bonds.~~ - F. The Director may also provide for the replacement of replace any bond which is mutilated, destroyed or lost.

~~(12) Proceedings and conditions specified exclusive.~~ - ~~Such~~ G. The revenue bonds may be issued in accordance with the specific proceedings and conditions required by this chapter.

Drafting Note: A separate § 10.1-304 is proposed here to incorporate the sale and issuance provisions for revenue bonds.

~~§ 10-104.~~ § 10.1-305. Bonds not to constitute debt of State Commonwealth .—Revenue bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the State of Virginia Commonwealth or a pledge of the faith and credit of the State, Commonwealth, but such bonds shall be payable solely from the funds herein provided therefor from fees and charges. All ~~such~~ The bonds shall state on their face that the State of Virginia Commonwealth is not obligated to pay the same the bonds or the interest thereon on them except from the special fund provided therefor from fees and charges under this chapter, and that the faith and credit of the State Commonwealth are not pledged to the payment of the principal or interest of ~~such~~ the bonds. The issuance of revenue bonds under the provisions of this chapter shall not directly or indirectly or contingently obligate the State Commonwealth to levy or to pledge any form of taxation whatever therefor 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.

Drafting Note: No change in the law.

~~§ 10-105.~~ § 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 of Virginia , Department of Conservation and Historic Resources, and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the Commonwealth . ~~Such~~ 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 ~~such~~ 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 ~~such~~ the trust indenture may contain ~~such~~ provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the Director in relation to the acquisition, construction, improvement, ~~and~~ maintenance, operation, repair and insurance of such facilities, and the custody, safeguarding and application of all moneys ; ~~and~~ . *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 of Virginia , ~~Department of Conservation and Historic Resources~~, and satisfactory to the original purchasers of the bonds issued ~~therefor~~ and ~~may also~~ . *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 ~~thereto~~ *to the facilities* be satisfactory to ~~such~~ the purchasers. It shall be lawful for any bank or trust company incorporated under the laws of this Commonwealth to act as ~~such~~ depository and to furnish ~~such~~ indemnifying bonds or to pledge ~~such~~ securities as ~~may~~ be 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 , ~~to the foregoing~~, ~~such~~ *the* indenture may contain ~~such~~ other provisions as ~~that~~ the Director ~~may deem~~ *deems* reasonable and proper for the security of the bondholders.

Drafting Note: No change in the law.

~~§ 10-106. § 10.1-307. Fees and charges.~~—The Director shall ~~fix and revise, from time to time as may be necessary, establish and collect~~ fees and charges for the use of camping and recreational facilities ~~the~~ . ~~These revenues of which shall have been pledged to pay the principal of and the interest on revenue bonds issued under the provisions of this chapter ; and shall charge and collect the same .~~ *Such* The fees and charges shall be ~~so fixed~~ *established* and adjusted in respect of the aggregate fees and charges for the camping and recreational facilities the revenues of which shall have been ~~so~~ pledged as to provide a fund sufficient to pay ~~(1)~~ (i) the cost of maintaining, repairing and operating ~~such~~ *the* facilities unless such cost shall ~~is~~ otherwise ~~be~~ provided for, ~~(2)~~ (ii) ~~such~~ *the* bonds and the interest thereon as the ~~same~~ shall ~~bonds~~ become due and ~~(3)~~ (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.

Drafting Note: No change in the law.

~~§ 10-107. § 10.1-308 Sinking fund.~~—The fees, charges and revenues derived from any camping and recreational facilities the revenues of which shall have been pledged to pay the principal of ~~and the interest on~~ *subject to* revenue bonds issued under the provisions of this chapter, except ~~such part thereof as may be charges~~ required to pay the cost of maintaining, repairing and operating such facilities and to provide ~~such~~ *fund* reserves ~~therefor~~ as may be ~~provided for in the resolution authorizing the issuance of such bonds or in the trust indenture~~ , shall be set aside at ~~such regular intervals as may be provided in such resolution or such trust indenture~~, in a sinking fund ~~which~~ . *The sinking fund* is hereby pledged to ; and charged with the payment of ~~(1)~~ (i) the interest upon ~~such~~ *the* bonds as ~~such~~ *interest* shall ~~fall it becomes due,~~ ~~(2)~~ (ii) the principal of the bonds as ~~the same shall fall it becomes due,~~ ~~(3)~~ (iii) the necessary charges of paying agents for paying ~~such~~ *the* interest and principal, and ~~(4)~~ (iv) any premium upon bonds retired by call or purchase as ~~herein provided in this chapter~~ . The use and disposition of ~~such~~ *the* sinking fund shall be subject to ~~such~~ regulations as ~~may be provided in the resolution authorizing the issuance of the bonds, or in the trust indenture ; but, except as may . Unless otherwise be provided in such the resolution or trust indenture, such the sinking fund shall be a fund for all such bonds without distinction or priority of one bond over another. Subject to the provisions of the resolution authorizing the issuance of the bonds or of the trust indenture any~~ Any moneys in ~~such~~ *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.

Drafting Note: No change in the law.

~~§ 10-108. § 10.1-309. Remedies of bondholders and trustee.~~—Any holder of revenue bonds or ~~attached coupons~~ issued under the provisions of this chapter ~~or any of the coupons attached thereto, and the any trustee ; under the trust indenture ; if any, except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may ; either at law or in equity, by suit, action, mandamus, or other proceedings, protect and enforce any and all rights granted under the laws of the Commonwealth or granted hereunder or under such the resolution or trust indenture, and may enforce and compel performance of all duties required by this chapter, or by such the resolution or trust indenture, to be performed by the Director, including the fixing establishing , charging~~

and collecting of fees and charges for the use of camping and recreational facilities.

Drafting Note: No change in the law.

~~§ 10-109. § 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 authorizing the issuance of ~~bonds or in 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 ~~and~~ . *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 ~~such the~~ funds, and hold and apply the ~~same to fees for the purposes hereof,~~ *of this chapter* subject to such regulation as this chapter and ~~such 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 by ~~such other person or persons as may be designated by the Director for such purpose~~ *his designee* .

Drafting Note: No change in the law.

~~§ 10-110. § 10.1-311.~~ Revenue refunding bonds.—The Director is authorized to provide for the issuance of revenue refunding bonds of the Commonwealth, subject to ~~all of the applicable~~ provisions of this chapter ~~insofar as the same may be applicable~~ , for the purpose of refunding any revenue bonds issued under the provisions of this chapter and then outstanding, including the redemption premium ~~thereon,~~ *on the bonds* after first obtaining the consent of the Governor.

Drafting Note: No change in the law.

~~§ 10-111. Chapter gives additional powers.—This chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.~~

~~§ 10-112. Chapter liberally construed.—This chapter, being necessary for the welfare of the State and its inhabitants, shall be liberally construed to effect the purposes hereof.~~

Drafting Note : Existing § 10.1-111 and § 10.1-112 describe general rules of statutory interpretation.

~~§ 10-112.1. § 10.1-312.~~ Bonds declared legal and authorized investments.—The bonds issued pursuant to this chapter shall be ~~and are hereby declared to be~~ legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians and for all public funds of the Commonwealth or other political ~~corporations or~~ subdivisions of the Commonwealth. Such bonds shall be eligible to secure the deposit of ~~any and all~~ public funds of the Commonwealth and ~~any and all~~ public funds of *counties, cities, towns, eounties,* school districts or other political ~~corporations or~~ subdivisions of the Commonwealth ~~and such bonds~~ . *In addition, the bonds* shall be lawful and sufficient security for ~~said~~ deposits to the extent of their value when accompanied by all unmatured coupons ~~appertaining thereto~~ .

Drafting Note: No change in the law.

CHAPTER 4.

SCENIC RIVERS ACT.

~~§ 10-167. Short title; declaration of policy; purpose; consideration of river as scenic resource.—(a) This chapter shall be known and may be cited as the “Scenic Rivers Act.”~~

~~(b) It is hereby declared to be the policy of the Commonwealth of Virginia that rivers, streams, runs and waterways including their shores and immediate environs which possess great natural and pastoral beauty constitute natural resources, the conservation of which constitutes a beneficial public purpose. It is further declared that preservation of certain rivers or sections of rivers for their scenic values is a beneficial purpose of water resource policy.~~

~~(c) The purpose of this legislation is to provide for the identification, preservation, and protection of certain rivers or sections of rivers which possess natural beauty of high quality,~~

and therefore should be included in a Virginia Scenic River System to assure their use and enjoyment for their scenic, recreational, geologic, fish and wildlife, historic, cultural, or other values.

(d) In all planning for the use and development of water and related land resources including the construction of impoundments, diversions, roadways, crossings, channelization, locks, canals, or other uses which change the character of a stream or waterway or destroy its scenic values, full consideration and evaluation of the river as a scenic resource shall be given before alternative plans for use and development are approved.

Drafting Note: This section is being repealed. Subsection (a) is not necessary because it states the name of the Act. Subsection (b) is stricken because it states legislative policy. Subsection (c) is moved to proposed §§ 10.1-401 (existing § 10-169) and 10.1-405 (existing § 10-173). Subsection (d) has become proposed § 10.1-402.

§ 10-168 10.1-400 . Definitions.—As used in this chapter, the following words and terms shall have the following meanings unless the context requires a different meaning :

“Director” shall mean means the Director of the Department of Conservation and Historic Resources.

“Division” shall mean the Division of Parks and Recreation.

“River” shall mean 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.

“Scenic Rivers System” shall mean and include means those rivers or sections of rivers designated as a scenic river by an act of the General Assembly.

Drafting Note: At the request of DCHR, the definition of “Director” was not removed although it is defined in the general provisions of the subtitle. The definition of “Division” was removed because references to specific divisions within DCHR are being deleted. A definition of “Scenic river” was added.

§ 10-169 10.1-401 . Duties Powers and duties of Director and Division ; acquisition of property — In addition to other duties conferred by Chapter 1 (§ 10-1 et seq.) of this title, the A. The Director and the Division shall have the following duties duty to :

1. Identify rivers or sections of rivers which should be considered for designation because of their outstanding natural beauty. The Division shall make

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

2 3 . The Director shall recommend Recommend to the Governor and to the General Assembly rivers or sections thereof to be considered for designation as scenic rivers.

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 this property to other state agencies. The Director may not exercise the right of eminent domain in acquiring any such property or interest.

Drafting Note: References to the Division were removed. Subdivision A1 is taken from subsection (c) of existing § 10-167. Subsection A of existing § 10-170 was added to subdivision A2 of this section so that all material regarding studies would be in one place. Subsection B is existing § 10-175, which is now the last section in the Scenic Rivers Act. A provision that the Director may retain title was added at the request of DCHR. The Director already has this authority, this states it explicitly. The sections were combined so that the powers and duties of the Director would be in one section at the beginning of the Act.

§ 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 which change the character of a stream or waterway or destroy its scenic values, 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.

Drafting Note: This section is subsection (d) of existing § 10-167. This portion of § 10-167 is retained because it appears to be substantive; however, it does not currently specify who has the duty of evaluating the river as a scenic resource; therefore it has been provided that the Department may make recommendations. The last sentence is also new language.

~~§ 10-172 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.

Drafting Note: No change in the law.

~~§ 10-171 10.1-404 .~~ Recommendation that 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.

Drafting Note: No change in the law.

~~§ 10-173 10.1-405 .~~ Agency to administer river *Duties of administering agency; eminent domain prohibited* .— A. The agency designated by the General Assembly shall administer a :

1. Administer the scenic river or section thereof to achieve the purposes of this chapter, and in accordance with its powers and duties conferred elsewhere by law 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 values and to encourage the continuance of existing agricultural, horticultural, forestry and open space land and water uses .

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

3. Assist local governments in solving problems associated with the scenic river, in consultation with the Director and the Advisory Board.

B. The administering agency shall not exercise the right of eminent domain to acquire any real property or interest therein for the purpose of providing additional access to the river.

Drafting Note: Instead of stating that the river should be administered “to achieve the purposes of this chapter” those purposes are spelled out and are taken from existing § 10-167, which states legislative policy and purpose. The last clause of subdivision A.1. came from existing § 10-173.4. The last clause of existing § 10-173 was removed because it seems unnecessary to state that the agency shall act in accordance with powers and duties conferred elsewhere. Proposed subdivisions 2 and 3 and subsection B were repeated in many, but not all, of the designations. They were placed in this section so that they would apply to all administering agencies.

~~§ 10-170 10.1-406 .~~ Studies to be conducted in cooperation with other agencies; Advisory Committee Board .—A. Studies by the Division of rivers to be considered for designation as wild, scenic, or recreational rivers shall be conducted in cooperation with appropriate agencies of the Commonwealth and of the United States.

B. When the General Assembly acts to include a river or section of river in the Scenic River System, the Governor shall appoint an Advisory Committee Board of residents, including at least one riparian landowner, in the locality or localities of the scenic river or river section and other qualified persons. The Advisory Committee Board shall elect a chairman from among its members. Members of the Advisory Committee shall serve at the pleasure of the Governor and receive no compensation .

B. The duties of the Advisory Committee Board shall be to assist and advise the Director concerning the protection or management of such the scenic river. Members of the Advisory Committee shall receive no compensation. The Advisory Board may consider and comment on any federal, state or local governmental plans to approve, license, fund or construct facilities which would alter the natural, scenic or historic assets which qualified the river for scenic

designation. Committee is changed to Board. Existing subsection A is included in proposed § 10.1-401. The last sentence appeared in many, but not all, of the designations. By placing it in this section it will apply to all advisory boards.

~~§ 10-174~~ 10.1-407 . Authority Act of General Assembly required to construct, etc., dam or other structure.—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.

Drafting Note: No change in the law.

§ 10.1-408. Riparian uses.—Except as provided in § 10.1-407, all riparian land and water uses along or in the designated section of a river which are permitted by law shall not be restricted by this chapter.

Drafting Note: This provision was in some, but not all, of the designations. The first clause was added to clarify that § 10.1-407 still applies.

~~§ 10-173.4~~ 10.1-409 . Appomattox State Scenic River; ~~Virginia Commission~~ Department of Game and Inland Fisheries authorized ~~designated~~ to administer the Scenic River in accordance with the Scenic Rivers Act .—A. Consistent with the public policy of the Commonwealth of Virginia that the conservation of portions of rivers, streams, runs and waterways including their shores and immediate environs constitutes a beneficial public purpose, the Appomattox River from the abutment dam located approximately ~~1 3/10~~ 1.3 miles downstream from Lake Chesdin, to the Route 36 bridge crossing in the City of Petersburg, a distance of approximately ~~5~~ five miles, is hereby designated a component of the Virginia Scenic Rivers System. The powers and limitations of this designation are limited solely to the authority of §§ 10-167 through 10-175 in effect at the time of the enactment of this section.

The purpose of this legislation is to provide for the identification, preservation and protection of the above section of the Appomattox River to assure the use and enjoyment of its scenic, 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, provided these uses are in compliance with all applicable laws and regulations.

B. The ~~Virginia Commission~~ Department of Game and Inland Fisheries ; hereinafter referred to as the Commission, is designated to administer the Appomattox State Scenic River in accordance with this section.

C. The Governor, in consultation with the ~~Commission~~ Director and affected local governing bodies, shall appoint an Appomattox State Scenic River Advisory Committee which is continued and shall hereafter be known as the Appomattox State Scenic River Advisory Board : The Advisory Board , which shall include be composed of at least three riparian landowners within the designated section and other local residents. The Advisory Board shall advise the Director on matters pertaining to the administration and management of the river. The Advisory Board shall also consider and comment on any federal, state or local governmental plans to approve, license, fund or construct facilities which would alter the natural, scenic or historic assets which qualified the river for scenic designation.

D. The Commission, as administering agency, shall periodically survey the river and its immediate environs and monitor all existing and proposed uses of the river and related land resources. The Commission, in consultation with the Director, the Division and the Appomattox State Scenic River Advisory Board, shall work with local units of government to solve problems associated with the river.

E. All riparian land and water uses along or in the designated section of the Appomattox River which are permitted by law shall not be restricted by this section.

Drafting Note: Provisions regarding public policy and the purpose of the legislation were moved to proposed § 10.1-405 (existing § 10-173). The designated rivers have been placed in alphabetical order.

The sentence stating that the Advisory Board shall advise the Governor was stricken in this and other designation sections because a similar provision is in existing § 10-170 (proposed § 10.1-406). The following sentence, requiring the Advisory Board to comment on governmental plans is placed in proposed § 10.1-406. Subsection D is contained in proposed § 10.1-405. Subsection E is contained in proposed § 10.1-408. It is provided that the Director rather than the administering agency participate in the appointment of the advisory board. This has been done in all designations because it is current practice. The last sentence of the first paragraph appeared in this and most other designations. It has been stricken in all designations because it violates Article IV of the Va. Constitution by limiting the power of the General Assembly.

~~§ 10-173.2~~ 10.1-410 . Catoctin Creek State Scenic River; Northern Virginia Regional Park Authority authorized *designated* to administer the Scenic River in accordance with the Scenic Rivers Act .—A. Consistent with the public policy of the Commonwealth of Virginia that the conservation of portions of rivers, streams, runs and waterways including their shores and immediate environs constitutes a beneficial public purpose, The Catoctin Creek from bank to bank in Loudoun County from the Town of Waterford to its junction with the Potomac River, a distance of approximately sixteen river miles, is hereby designated a component of the Virginia Scenic Rivers System. The powers and limitations of this designation are limited solely to the authority of §§ 10-167 through 10-175 in effect at the time of the enactment of this section.

The purpose of this legislation is to provide for the identification, preservation and protection of the above section of Catoctin Creek to assure enjoyment of its scenic, 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, provided such uses are in compliance with all applicable laws and regulations.

B. The Northern Virginia Regional Park Authority ; hereinafter referred to as the Authority, is designated to administer the Catoctin Creek State Scenic River in accordance with this section.

C. The Governor, in consultation with the Authority *Director* and affected local governing bodies, shall appoint a Catoctin Creek State Scenic River Advisory Committee which is continued and shall hereafter be known as the Catoctin Creek State Scenic River Advisory Board : The Advisory Board , which shall be composed of five area residents including at least three riparian landowners within the designated section. The Advisory Board shall advise the Director on matters pertaining to the administration and management of the river. The Advisory Board shall also consider and comment on any federal, state or local governmental plans to approve, license, fund or construct facilities which would alter the natural, scenic or historic assets which qualified the creek for scenic designation.

D. The Authority shall not exercise the right of eminent domain to acquire any real property or interest therein for the purpose of providing additional access to the Catoctin Creek State Scenic River.

E. The Authority, as administering agency, shall periodically survey the river and its immediate environs and monitor existing and proposed uses of the river and related land resources. The Authority, in consultation with the Director, the Division and the Catoctin Creek State Scenic River Advisory Board, shall work with local units of government to solve problems associated with the river.

F. All riparian land and water uses along or in the designated section of Catoctin Creek which are permitted by law shall not be restricted by this section.

G. D. No dam or other structure that impedes the natural flow of Catoctin Creek shall be constructed, operated, or maintained within the section of Catoctin Creek designated as a scenic river by this legislation unless specifically authorized by an act of the General Assembly.

As used in this section, the words “dam or other structure” shall mean any structure extending from bank to bank of Catoctin Creek which 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.

Drafting Note: Policy and purpose statements have been removed. Subsection F is contained in proposed § 10.1-408. The last sentence of subsection C is contained in proposed § 10.1-406. Subsections D and E are contained in proposed § 10.1-405.

~~§ 10-173.2~~ 10.1-411 . Goose Creek Scenic River; Northern Virginia Regional Park Authority authorized *designated* to administer the Scenic River in accordance with the Scenic Rivers Act .— A. Consistent with the public policy of the Commonwealth of Virginia that the conservation of portions of rivers, streams, runs and waterways including their shores and immediate environs constitutes a beneficial public purpose, Goose Creek, from bank to bank in Loudoun County from the Loudoun-Fauquier County line to its junction with the Potomac River, a distance of approximately twenty-eight river miles, is hereby designated a component of the Virginia Scenic Rivers System.

The purpose of this legislation is to provide for the identification, preservation and protection of the above section of the Goose Creek to assure use and enjoyment for its scenic, 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, provided such uses are

in compliance with all applicable laws and regulations governing the corridor.

B. The Northern Virginia Regional Park Authority, hereinafter referred to as the Authority, is designated to administer the Goose Creek Scenic River in accordance with this section .

C. The Governor, in consultation with the Authority Director , shall appoint a Goose Creek Scenic River Advisory Committee which is continued and shall hereafter be known as the Goose Creek Scenic River Advisory Board : The Advisory Board , which shall be composed of seven area residents including at least four riparian landowners within the designated section.

D. The Advisory Board shall advise the Director of the Department of Conservation and Historic Resources on matters pertaining to administration, management, and plans for development promulgated by the Authority, prior to their implementation. The Advisory Board shall also consider and comment on any federal, state or local governmental plans to approve, license, fund or construct facilities which would alter the natural, scenic or historic assets which qualified the creek for scenic designation.

D E . The Authority is authorized to acquire, either by gift or purchase, any real property or interests therein which the Authority considers necessary or desirable to provide public use areas as identified in the Goose Creek Scenic River Report published in 1975. The right of eminent domain shall not be used in these acquisitions.

E. The Authority, in consultation with the Director, the Division and the Goose Creek Scenic River Advisory Board, shall effect the necessary planning for the administration and management of the scenic river.

F. All existing riparian land and water uses which are currently permitted along or in the designated section of Goose Creek and expansion of these uses as authorized by law shall be permitted and shall not be restricted by this section.

G. F. 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 this legislation unless specifically authorized by an act of the General Assembly.

As used in this section, the words "dam or other structure" mean any structure extending from bank to bank of Goose Creek which will interfere with the normal movement of waterborne traffic, interfere with the normal movement of fish or wildlife, or raise the water level on the upstream side of the structure or lower the water level on the downstream side of the structure.

G. Nothing in this section chapter shall preclude the continued use, operation, and maintenance of the existing Fairfax City water impoundment, or the installation of new water intake facilities in the existing reservoir located within the designated section of Goose Creek.

As used in this section, the words "dam or other structure" shall mean any structure extending from bank to bank of Goose Creek which will interfere with the normal movement of waterborne traffic, interfere with the normal movement of fish or wildlife, or raise the water level on the upstream side of the structure or lower the water level on the downstream side of the structure.

Drafting Note: A reference to the Division was removed. Subsection A discusses public policy and purpose and that language is moved to proposed § 10.1-405 (existing § 10-173). The last sentence of existing subsection C is contained in proposed § 10.1-406. The last sentence of existing subsection D is contained in proposed § 10.1-405. Existing subsection E is contained in proposed § 10.1-405.

§ 10-176 10.1-412 . Declared a state scenic and historic river; planning for use and development; advisory committee; *Historic Falls of the James Scenic River*; City of Richmond designated agency to administer section .— (1) A. 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 declared to be a state scenic and historic river and constitutes a recreational, natural, scenic and historic resource, the conservation of which constitutes a beneficial public purpose designated a component of the Virginia Scenic Rivers System .

(2) In all planning for the use and development of water and related land resources including the construction of impoundments, diversions, roadways, crossings, channelization, locks, canals, or other uses which change the character of a stream or waterway or destroy its historic, scenic, recreational or ecological values, full consideration and evaluation of the river as

a historic, scenic and ecological resource shall be given before the work is undertaken. The alternatives to solutions shall also be considered before such work is undertaken.

(3) The Director of the Department of Conservation and Historic Resources and the council of the City of Richmond shall appoint a nine-member advisory committee of residents of the City of Richmond and other qualified persons, which shall be entitled the Falls of the James Committee. The city council shall appoint five members. The Committee shall elect a chairman from among its members. Members of the Committee shall serve at the will of the appointing body. The duties of the Committee shall be to assist and advise the Division of Parks and Recreation of the Department of Conservation and Historic Resources, the City of Richmond and other public bodies concerning the protection and management of this portion of the river. Members of the Committee shall receive no compensation.

(4) The General Assembly hereby designates the B. The City of Richmond as the agency of the Commonwealth is designated to administer this section of the James River to achieve the purposes of this chapter. Nothing in this designation shall impair the powers and duties of the city conferred elsewhere by law.

(5) No dam or other structure impeding the natural flow of this section of the James River shall be constructed, operated or maintained unless specifically authorized by an act of the General Assembly.

C. The Falls of the James Committee is continued as the Falls of the James Advisory Board, which shall be composed of nine members, including at least five residents of the City of Richmond. The Governor, in consultation with the Director and the Richmond City Council, shall appoint members as vacancies occur.

(6) D. 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.

(7) E. Nothing in this section 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 which may traverse the river, such as road or railroad bridges, raw water intake structures, or water or sewer lines which would be constructed below water level.

Drafting Note: This section is not currently in the Scenic Rivers Act; this recodification proposes to include it in the Act. Public purpose language is removed. Subsection (2) is a restatement of subsection (d) of existing § 10-167, which is proposed § 10.1-402.

Subsection (3) currently provides for a Falls of the James Committee, with members appointed by the Richmond City Council and the Director of DCHR. The chapter provides for an advisory board appointed by the Governor. Changes have been made to conform this section with the chapter.

Subsection (5) regarding dams duplicates existing § 10-174 (proposed § 10.1-407) and is stricken.

~~§ 10-173.0~~ 10.1-413 . Segment of the James River Scenic River ; a scenic river Botetourt County Board of Supervisors designated to administer .— A. That portion of the James River in Botetourt County, starting from a point two miles southeast of the point where Route 43 (old Route 220) crosses the James River at Eagle Rock running approximately fourteen miles southeastward to the point where Route 630 crosses the James River at Springwood ; shall be a scenic river is hereby designated a component of the Virginia Scenic Rivers System . B. The Botetourt County Board of Supervisors is designated to administer this section of the James River Scenic River.

Drafting Note: Designation language was revised to conform with other sections.

~~§ 10-173.6~~ 10.1-414 . Nottoway State Scenic River; Sussex County Board of Supervisors authorized designated to administer the Scenic River in accordance with the Scenic Rivers Act .— A. Consistent with the public policy of the Commonwealth of Virginia that the conservation of portions of rivers, streams, runs and waterways including their shores and immediate environs constitutes a beneficial public purpose, the The Nottoway River in Sussex County, from the Route 40 bridge at Stony Creek to the Southampton County line, a distance of approximately thirty-three miles, is hereby designated a component of the Virginia Scenic Rivers System. The powers and limitations of this designation are limited solely to the authority of §§ 10-167 through 10-175 of the Code of Virginia, in effect at the time of the enactment of this section.

The purpose of this legislation is to provide for the identification, preservation and protection of the above section of the Nottoway River to assure the use and enjoyment of its scenic, 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, provided these uses are in compliance with all applicable laws and regulations.

B. The Sussex County Board of Supervisors ; hereinafter referred to as the county, is designated to administer the Nottoway Scenic River in accordance with this section.

C. The Governor shall appoint a Nottoway Scenic River Advisory Committee which is continued and shall hereafter be known as the Nottoway State Scenic River Advisory Board. The Director of the Department of Conservation and Historic Resources shall make recommendations to the Governor after consulting with the Sussex County Board of Supervisors. The Advisory Board shall be composed of local residents to include , including at least three riparian landowners within the designated section. The Advisory Board shall advise the Director on matters pertaining to the administration and management of the river. The Advisory Board shall also consider and comment on any federal, state or local governmental plans to approve, license, fund or construct facilities which would alter the natural, scenic or historic assets which qualified the river for scenic designation.

D. The county, as administering agency, shall periodically survey the river and its immediate environs and monitor all existing and proposed uses of the river and related land resources and work in consultation with the Director, the Division and the Nottoway State Scenic River Advisory Board to solve problems associated with the river.

E. All riparian land and water uses along or in the designated section of the Nottoway River which are permitted by law shall not be restricted by this section.

F. No dam or other structure that impedes the natural flow of the Nottoway River shall be constructed, operated, or maintained within the section of the Nottoway River designated as a scenic river by this legislation unless specifically authorized by an act of the General Assembly.

Drafting Note: Public policy and purpose language was stricken. The last sentence of subsection C is contained in proposed § 10.1-406. Subsection D is contained in proposed § 10.1-405. Subsection E is contained in proposed § 10.1-408. Subsection F, regarding dams, was stricken because it duplicates existing § 10-174 (proposed § 10.1-407).

~~§ 10-173.8 10.1-415 . Rappahannock State Scenic River; Virginia Commission Department of Game and Inland Fisheries authorized designated to administer the Scenic River in accordance with the Scenic Rivers Act .-A. Consistent with the public policy of the Commonwealth of Virginia that the conservation of portions of rivers, streams, runs and waterways including their shores and immediate environs which possess great natural and pastoral beauty constitutes a beneficial public purpose, the The mainstem of the Rappahannock River in Rappahannock, Culpeper and Fauquier Counties from its headwaters near Chester Gap to Deep Run is hereby designated a component of the Virginia Scenic Rivers System. The powers and limitations of this designation are limited solely to the authority of the Scenic Rivers Act, Chapter 15 (§ 10-167 et seq.), Title 10 of this Code.~~

The purpose of this legislation is to provide for the identification, preservation and protection of the above section of the Rappahannock River to assure the enjoyment of its scenic, 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, provided these uses are in compliance with all applicable laws and regulations.

B. The Virginia Commission Department of Game and Inland Fisheries ; hereinafter referred to as the Commission, is designated to administer the Rappahannock State Scenic River in accordance with this section .

C. The Governor shall appoint a Rappahannock Scenic River Advisory Board. The Division of Parks and Recreation Director shall make recommendations to the Governor after consulting with the affected county boards of supervisors. The Advisory Board shall be composed of local residents, to include including riparian landowners within the designated section. Each of the involved counties shall enjoy equal representation on the Advisory Board. The Advisory Board shall advise the Division of Parks and Recreation and the Commission on matters pertaining to the administration and management of the river. The Advisory Board shall also consider and comment on any federal, state or local governmental plans to approve, license, fund or construct facilities which would alter the natural, scenic or historic values which qualified the river for scenic designation.

D. The Commission, as administering agency, shall periodically survey the river and its immediate environs and monitor existing and proposed uses of the river and related land resources. The Commission, in consultation with the Division of Parks and Recreation and the

Rappahannock Scenic River Advisory Board, shall work with local units of government to solve problems associated with the river.

E. All riparian land and water uses along or in the designated section of the Rappahannock River which are permitted by law shall not be restricted by this section.

F D . Nothing in this section *chapter* shall preclude the continued operation and maintenance of existing dams in the designated section.

G E . This section shall not apply to any portion of the Rappahannock River below Deep Run, except that no present or future impoundment downstream from Deep Run shall increase the level of the Rappahannock River above Deep Run.

Drafting Note: Division changed to Director. The last sentence of subsection C is contained in proposed § 10.1-406. Subsection D is contained in proposed § 10.1-405. Subsection E is contained in proposed § 10.1-408. Existing subsection F seems designed to overcome existing § 10-174 (proposed § 10.1-407), which prohibits the operation and maintenance of dams; therefore, "section" was changed to "chapter."

~~§ 10-173.1~~ 10.1-416 . Rivanna State Scenic River; Fluvanna County *designated* to administer the Scenic River in accordance with the Scenic Rivers Act .—A. The River ~~river~~ , stream or waterway known as the Rivanna from the Fluvanna-Albemarle County line to the junction of the Rivanna with the James River, a distance of approximately twenty-six miles, is hereby designated the Rivanna Scenic River, a component of the Virginia Scenic Rivers System. The powers and limitations of this designation are limited solely to the authority of §§ 10-167 through 10-175 in effect at the time of the enactment of this section.

B. The General Assembly hereby designates Fluvanna County Park Authority, hereinafter referred to *in this section* as the Authority, as the agency of the Commonwealth *is designated* to administer the Rivanna State Scenic River according to the Scenic Rivers Act (§ 10-167 et seq.) . Nothing in this designation shall impair the powers and duties of Fluvanna County conferred elsewhere by law.

C. The Authority and the ~~Division~~ Department shall jointly determine the necessary planning for river management within the river corridor now delineated as the Conservation District by the 1974 Fluvanna County Zoning Ordinance. Donations of lands or easements on lands outside the above described corridor may be included for administration by the Authority as part of the Rivanna State Scenic River.

Drafting Note: The last sentence of subsection B is stricken because it seems unnecessary.

~~§ 10-173.7~~ 10.1-417 . Shenandoah State Scenic River; ~~Virginia Commission~~ Department of Game and Inland Fisheries *authorized designated* to administer the Scenic River in accordance with the Scenic Rivers Act .—A. Consistent with the public policy of the Commonwealth of Virginia that the conservation of portions of rivers, streams, runs and waterways including their shores and immediate environs constitutes a beneficial public purpose, the ~~The~~ Shenandoah River in Clarke County from the Warren-Clarke County line to Lockes Landing, a distance of approximately fourteen river miles, is hereby designated a component of the Virginia Scenic Rivers System. The powers and limitations of this designation are limited solely to the authority of §§ 10-167 through 10-175 of the Code of Virginia.

The purpose of this legislation is to provide for the identification, preservation and protection of the above section of the Shenandoah River to assure the enjoyment of its scenic, 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, provided these uses are in compliance with all applicable laws and regulations.

B. The ~~Virginia Commission~~ Department of Game and Inland Fisheries ; hereinafter referred to as the Commission, is designated to administer the Shenandoah State Scenic River in accordance with this section .

C. The Governor shall appoint a Shenandoah State Scenic River Advisory Committee which is continued and shall hereafter be known as the Shenandoah State Scenic River Advisory Board. The Director of the Department of Conservation and Historic Resources shall make recommendations to the Governor after consulting with the Clarke County Board of Supervisors. The Advisory Board shall be composed of local residents, a majority of whom shall be riparian landowners within the designated section. The Advisory Board shall advise the Director on matters pertaining to the administration and management of the river. The Advisory Board shall also consider and comment on any federal, state or local governmental plans to approve, license, fund or construct facilities which would alter the natural, scenic or historic assets which

qualified the river for scenic designation.

D. The Commission, as administering agency, shall periodically survey the river and its immediate environs and monitor existing and proposed uses of the river and related land resources. The Commission, in consultation with the Director, the Division and the Shenandoah State Scenic River Advisory Board, shall work with local units of government to solve problems associated with the river.

E. All riparian land and water uses along or in the designated section of the Shenandoah River which are permitted by law shall not be restricted by this section.

F. D. No dam or other structure that impedes the natural flow of the Shenandoah River shall be constructed, operated, or maintained within the section of the Shenandoah River designated as a scenic river by this legislation unless specifically authorized by an act of the General Assembly.

As used in this section, the words "dam or other structure" shall mean any structure extending from bank to bank of the Shenandoah River which will 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.

Drafting Note: Public policy and purpose statements were removed. The last sentence of subsection C is contained in proposed § 10.1-406. Existing subsection D is contained in proposed § 10.1-405. Subsection E is contained in proposed § 10.1-408.

~~§ 10-173.5~~ 10.1-418 . Staunton State Scenic River; ~~Commission~~ Department of Game and Inland Fisheries designated to administer the Scenic River in accordance with the Scenic Rivers Act .—A. The river, stream or waterway known as the Staunton or the Roanoke from river mile 49.9 at the Brookneal Public Landing to river mile 60.7 at the State Route 761 bridge, a distance of approximately ~~ten and eight tenths~~ 10.8 river miles, is hereby designated the Staunton State Scenic River, a component of the Virginia Scenic Rivers System. River mile numbers are those used by the State Water Control Board beginning at the mouth of Buggs Island Lake.

B. The ~~Commission~~ Department of Game and Inland Fisheries ; hereinafter referred to as the Commission, is designated to administer the Staunton State Scenic River according to the Scenic Rivers Act and in accordance with powers and duties conferred upon the Commission here and by the laws of this Commonwealth in effect at the time of the enactment of this section .

Drafting Note: No change in the law.

~~§ 10-175. Acquisition and transfer of real property.—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 to transfer this property to other state agencies. The Director may not exercise the right of eminent domain in acquiring any such property or interest.~~

Drafting Note: The provisions of this section have been included in proposed § 10.1-401 so that the directors' powers and duties will be in one section.

CHAPTER 5.

SOIL AND WATER CONSERVATION.

Article 1.

General Provisions.

~~§ 21-1. Short title.—This chapter may be known, designated and cited as the Soil Conservation Districts Law.~~

Drafting Note: This section is being repealed because it is not necessary.

~~§ 21-2. Legislative determinations; declaration of policy.—It is hereby declared as a matter of legislative determination -~~

~~(a) The condition.—That the lands of the State of Virginia are among the basic assets of the State, and that the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the lands of this State by wind and water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and~~

exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being washed off of lands; that there has been an accelerated washing of sloping lands; these processes of erosion by water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing of soil from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible; and that extensive denuding of land for housing and shopping complexes creates critical erosion areas that are difficult to effectively revegetate and the resulting sediment causes extensive pollution of vital streams, ponds and lakes.

(b) The consequences.—That the consequences of such soil erosion in the form of soil washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash or poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields, despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall runoff, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, buildings, and other property from floods; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming and grazing.

(c) The appropriate corrective methods.—That to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damages, and further agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water, it is necessary that the land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil conserving land-use practices and works of improvement for flood prevention of agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(d) Declaration of policy.—That whereas, there is a pressing need for the conservation of soil and water resources in all areas of the State, whether urban, suburban, or rural, and that the benefits of soil and water conservation practices, programs, and projects, as carried out by the Virginia Soil and Water Conservation Commission and by the soil and water conservation districts, should be available to all such areas; therefore, it is hereby declared to be the policy of the legislature to provide for the conservation of the soil and water resources of this State, and for the control and prevention of soil erosion, and for the prevention of floodwater and sediment damages, and for furthering agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this State. To this end, and effective 1, 1970, all incorporated towns within any county of this State having a soil and water conservation district shall be included in and become a part of such soil and water conservation district; provided, however, that if a town lies within the boundaries of more than one county, such town shall be considered for the purposes of this chapter to be wholly within the county in which the larger portion of the town lies. Cities not within an existing soil and water conservation district may become a district or a part of a district as hereinafter prescribed.

Drafting Note: Existing § 21-2 is being repealed because it contains lengthy provisions on soil and water problems and policy. The last two sentences are moved to proposed § 10.1-506.

§ 21-2 10.1-500 . Definitions.— Whenever used or referred to As used in this chapter, unless the context requires a different meaning clearly appears from the context :

“Agency of this State” includes the government of this Commonwealth and any subdivision,

agency, or instrumentality, corporate or otherwise, of the government of this Commonwealth.

"Commission" or "Virginia Soil and Water Conservation Commission" "Board" means the Virginia Soil and Water Conservation Board referred to in § 21-6 .

"County" shall include includes towns.

"City" shall include includes all cities chartered under the laws of the Commonwealth of Virginia .

"Governing body of a city or county" shall mean 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.

"District" or "soil and water conservation district" means a governmental political subdivision of this Commonwealth ; and a public body corporate and politic, organized in accordance with the provisions of this chapter ; for the purposes, with the powers, and subject to the restrictions hereinafter set forth .

"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 be is available, by posting at a reasonable number of conspicuous places within the appropriate area ; such . Such posting to shall include, where possible, posting at public places where it may be is customary to post notices concerning county or municipal affairs generally . At any hearing Hearings held pursuant to such notice, at the time and place designated in such the notice, adjournment may be made adjourned from time to time without the necessity of renewing such the notice for such the adjourned dates.

"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 of their subdivisions, agencies or instrumentalities .

"Land occupier" or "occupier of land" includes any person, firm or corporation who shall hold holds title to, or shall be 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. Provided that the term The terms "land occupier" or and "occupier of land" shall not be construed to include an ordinary employee or hired hand who may be is furnished a dwelling, garden, utilities, supplies, or the like, as part payment, or payment in full, for his labor.

"Nominating petition" means a petition filed under the provisions of § 21-33 to nominate candidates for the office of director of a soil and water conservation district.

"Petition" means a petition filed under the provisions of § 21-12.2 for the creation of a district.

"State" or "Commonwealth" means the Commonwealth of Virginia.

"Director" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this chapter.

"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.

Drafting Note: Several definitions are stricken as unnecessary; director restated as "district director" to avoid confusion with Director of DCHR.

§ 21-89 10.1-501 . Duty of attorney for Commonwealth.—The attorney or the attorneys for the Commonwealth Commonwealth's attorney of the county or city in which the suits or actions under this chapter may arise shall represent the district directors or districts in such suits or actions.

Drafting Note: No change in the law.

§ 21-5.1. Declaration of policy.—The soils of the Commonwealth of Virginia are one of its most precious natural resources, and detailed knowledge of soil capability and adaptability is

essential to making wise land use decisions; to preparing plans for cities, towns, counties, planning commissions, farmers, industrial developers, soil and water conservationists, residential developers; for location and design of buildings, highways, reservoirs, sanitary facilities, recreation areas; and to protecting our most productive forest and agricultural lands. Therefore, it is hereby declared to be the policy of the General Assembly to accelerate the inventory of Virginia's soil resource and set a goal of completing the soil survey and mapping by 1996, and to appropriate funds to the Virginia Soil and Water Conservation Board to expedite the program so that the goal may be reached and to provide an incentive for participation of local units of government.

Drafting Note: The Department's duty to carry out the soil survey by 1996 is set out in proposed § 10.1-572 of this chapter. Policy statement is stricken as unnecessary.

Article 2.

Virginia Soil and Water Conservation Board.

~~§ 21-6~~ 10.1-502 . Soil and Water Conservation Board; ~~how constituted~~ *composition* .—The Virginia Soil and Water Conservation ~~Commission Board~~ is continued and shall hereafter be known as the Virginia Soil and Water Conservation Board. The Board shall perform the functions conferred upon it in this chapter. The Board shall consist of not less than eleven and not more than twelve voting members. The following shall serve, ex officio, as members of the Board: the Director of the Department of Conservation and Historic Resources, the Director of the State Cooperative Extension Service, the Director of Agriculture and Life Sciences, Virginia Polytechnic Institute and State University, Research Division, and the State Commissioner of Agriculture and Consumer Services or their designees shall be members of the Board . One member of the Board shall be appointed by the Governor to serve at the pleasure of the Governor, for a term coincident with that of the appointing Governor making the appointment ; vacancies in the office of such appointed member shall be filled by the Governor. Six members of the Board shall be farmers, appointed by the Governor from a list consisting of two qualified nominees for each vacancy to be submitted by the Board of Directors of the Virginia Association of Soil and Water Conservation Districts and the Virginia Soil and Water Conservation Board in joint session, each for a term of four years ; and these . Appointed members are shall not to serve more than two consecutive successive four-year full terms. This provision shall apply to all new appointments and present members of the Board at such time they may be reappointed. Other appointments Appointments to fill vacancies shall be made in the same manner as described above, except that such appointments shall be for the unexpired terms only. The Board may invite the Virginia State Conservationist, Soil Conservation Service, to serve as an advisory nonvoting member of the Board . The Board shall keep a record of its official actions, shall adopt a seal ; which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this chapter.

Drafting Note: It was provided that designees of ex officio members could be board members.

~~§ 21-7~~ 10.1-503 . Administrative officer and other employees; executive committee.—The Director of the Department of Conservation and Historic Resources, as administrative officer, shall provide such technical experts and such other agents and employees, permanent and temporary, as are necessary for the execution of the functions by the Virginia Soil and Water Conservation of the Board. The Board shall have authority to may create an executive committee and to delegate to the chairman of the Board, or to such the committee or to one or more agents or employees, such powers and duties as it may deem 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 may be possible under available appropriations, and having due regard to 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 such the agency or institution of learning , and make such special reports, surveys, or studies as requested by the Board may request .

Drafting Note: No change in the law.

~~§ 21-8~~ 10.1-504 . Chairman ; ; quorum and expenses .—The Commission Board shall designate its chairman ; and may, from time to time, change such designation. A majority of Six members of the Commission Board shall constitute a quorum, and the concurrence of a majority of those present and voting in any matter within their duties shall be required for its determination all determinations . The members of the Commission shall receive no compensation for their services on the Commission, but shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the Commission.

Drafting Note: "Commission" changed to "Board" to conform with 1985 reorganization changes. Reimbursement expenses are covered by § 14.1-5.2, so that sentence is stricken. It was

provided that six members constitute a quorum; that a concurrence of a majority of those present and voting rather than the concurrence of a majority is required for determinations.

~~§ 21-9. Bonds of employees; records; audit.—The Commission shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit, by the Auditor of Public Accounts, of the accounts of receipts and disbursements of the Commission.~~

Drafting Note: § 2.1-526.9 authorizes blanket surety bond for state employees. Other provisions of this section would be carried out as routine responsibility of DCHR.

~~§ 21-10 10.1-505 . Duties in general of Board .—In addition to the other duties and powers hereinafter conferred upon the Virginia Soil and Water Conservation Commission Board , it shall have the following duties and powers:~~

~~{ 1 } . To offer as a gift give or loan such appropriate financial and other assistance as may be appropriate to the district directors of soil and water conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.~~

~~{ 2 } . To keep the district directors of each of the several districts organized under the provisions of this chapter informed of the activities and experience of all other districts organized hereunder , and to facilitate an interchange of advice and experience between such the districts and cooperation between them .~~

~~{ 3 } . To coordinate the programs of the several soil and water conservation districts organized hereunder so far as this may be done by advice and consultation.~~

~~{ 4 } . To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State the Commonwealth , in the work of such the districts.~~

~~{ 5 } . To disseminate information throughout the State Commonwealth concerning the activities and programs of the soil and water conservation districts ; organized hereunder , and to encourage the formation of such districts in areas where their organization is desirable.~~

~~{ 6 } . To furnish aid and assistance to assist persons, associations, and corporations who or which are engaged in furthering the programs of the several soil and water conservation districts ; and ; to aid, encourage and assist in the establishment and operation of such associations and corporations, and to furnish authorize financial assistance to the officers and members of such associations and corporations in the discharge of their duties as such officers and members .~~

~~{ 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 hereafter embodied provided in federal laws which by their terms or by related executive orders require such action by a State 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- 534 and to advise and recommend to the Governor approval or disapproval of other similar soil and water conservation programs hereafter embodied provided in federal laws which by their terms or by related executive orders require approval or comment by the Governor.~~

~~{9} To receive funds from any source and to make disbursements consistent with the purposes of this chapter in discharging its duties and responsibilities.~~

Drafting Note: Subdivision 9 is stricken since this is a function of DCHR through the 1985 reorganization.

Article 3.

Soil and Water Conservation Districts.

~~§ 21-12.1 10.1-506 . Power to create new districts and to relocate and/ or define district boundaries ; composition of districts .— A. The Commission Board shall have the power to (i) create a new district or districts from territory not previously within an existing district, or (ii) merge or divide existing districts, or (iii) transfer territory from an existing district to another district, or (iv) modify or create a district or districts by a combination of the above and to (v) relocate and/ 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.

Drafting Note: "Commission" changed to "Board" and provisions numbered for clarity. Subsection B is from existing § 21-2 which is being repealed.

§ ~~21-12.2~~ 10.1-507 . Petitions filed with the ~~Commission Board~~ .—Petitions to modify or create districts , or relocate ~~and/~~ or define boundaries of existing districts , shall be initiated and filed with the ~~Virginia Soil and Water Conservation Commission Board~~ for ~~their~~ *its* approval or disapproval by any of the following methods:

{ 1 } . By petition of a majority of the directors of any or each district ; ~~and/~~ 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 ~~board~~ of directors.

{ 3 } . By petition of a majority of the governing body of a county ~~and/~~ or city ~~or cities~~ 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 and/ or city or cities* 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 ~~and a~~ *or city or cities* , 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. ~~In the event that~~ *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 ~~to the petition~~ 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.

Drafting Note: "Commission" changed to "Board"; no change in the law.

§ ~~21-13~~ 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 ~~soil and water conservation~~ district to function in the territory described in the petition, and ~~shall briefly state 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 ~~Virginia Soil and Water Conservation Commission~~ *duly 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 ~~soil and water conservation~~ district in such territory; and that the ~~Commission Board~~ determine that such a district be created.

Where more than one petition is filed covering parts of the same territory , the ~~Commission Board~~ may consolidate ~~all or any such~~ the petitions.

The ~~Commission Board~~ shall prescribe the *petition form for all such petitions* .

Drafting Note: "Commission" changed to "Board" to conform to current law.

§ ~~21-13.1~~ 10.1-509 . Disapproval of petition.— ~~Should~~ *If* the ~~Commission disapprove~~ *Board disapproves* the petition, ~~such~~ *its* determination shall be recorded, and if the petitioners ~~be are~~ the governing body of a district ~~or districts~~ ~~and/or~~ , county ~~or counties~~ ~~and/~~ or city ~~or cities~~ ~~and/~~ or a part of a county ~~or counties~~ or city ~~or cities~~ , ~~such~~ *the* governing body shall be so notified in writing. ~~Should~~ *If* the petitioners ~~be are~~ the requisite number of registered voters prescribed by § ~~21-12.2~~ (4) 10.1-507(4) , ~~such~~ notification shall be ~~made~~ by a notice being printed once in a newspaper ~~or newspapers~~ of general circulation within the area designated in the petition.

Drafting Note: No change in the law.

~~§ 21-14 10.1-510 .~~ Petition approved; ~~Commission Board~~ to give notice of hearing.— ~~Should If~~ the ~~Commission approve~~ ~~Board approves~~ the petition, within sixty days after such determination, the ~~Commission Board~~ shall ~~cause provide~~ due notice thereof 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 ~~petitions~~ petition upon (i) the question of the appropriate boundaries to be assigned to such district, ~~upon~~ (ii) the propriety of the petition and other proceedings taken under this chapter, and ~~upon~~ (iii) all questions relevant to such inquiries.

Drafting Note: Grammatical and style changes for clarity.

~~§ 21-15. Right to attend hearings.—All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard.~~

Drafting Note: Since any interested parties could attend a public hearing, there is no need to give a statutory right to attend.

~~§ 21-16 10.1-511 .~~ Adjournment of hearing when additional territory appears desirable.—If it ~~shall appear~~ 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 and such further hearing held .

Drafting Note: No change in the law.

~~§ 21-17 10.1-512 .~~ Determination of need for district ; ~~defining boundaries thereof and feasibility of operation~~ .—After such a public hearing, if the ~~Commission shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available,~~ ~~Board determines~~ that there is need, in the interest of the public health, safety, and welfare, for the proposed soil and water conservation district to function in the territory considered at the hearing, it shall make and record such ~~its~~ determination, and shall define, by metes and bounds or by legal subdivisions the boundaries of such ~~the~~ district. In ~~making such determination and in defining such boundaries so doing~~ , the ~~Commission Board~~ shall give due weight and consideration to ~~consider~~ (i) the topography of the area considered and of the State Commonwealth , (ii) the composition of soils ~~therein 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 ~~such 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 under the provisions of this chapter , (vii) the existing political subdivisions ; , and ~~such~~ (viii) other relevant physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in § 21-2 . The territory to be included within such boundaries need not be contiguous.

Drafting Note: Reference to § 21-2 is deleted since section is to be stricken.

~~§ 21-18 10.1-513 .~~ Determination that district not needed.—If the ~~Commission shall determine~~ ~~Board determines~~ after ~~such 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 make and record ~~such its~~ determination and shall deny the petition.

Drafting Note: No change in the law.

~~§ 21-20 10.1-514 .~~ Determination of feasibility of operation.—After the ~~Commission Board~~ has made and recorded a determination that there is need ; in the interest of the public health, safety, and welfare, for the organization of the proposed district in a particular territory, and has defined the boundaries thereof , it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil and water conservation districts in this chapter is administratively practicable and feasible. In making ~~such its~~ determination, the ~~Commission Board~~ shall give due regard and weight to ~~consider~~ the attitudes of the occupiers of lands lying within the defined boundaries, the probable expense of the operation of such ~~districts~~ district , the effect upon the programs of ~~such any~~ existing districts as may be involved , and ~~such other relevant~~ economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in § 21-2 . If the ~~Commission shall determine~~ ~~Board determines~~ that the operation of ~~such a~~ district is administratively practicable and feasible, it shall record ~~such its~~ determination and shall proceed with the organization of the district or districts in the manner hereinafter provided . If the ~~Commission shall determine~~ ~~Board determines~~ that the operation of ~~such a~~ district is not

administratively practicable and feasible, it shall record ~~such~~ *its* determination and deny the petition. ~~In the event that~~ *If* the petition is denied, ~~then the Commission Board shall notify the petitioner or petitioners in the manner provided by § 21-13.1 in this chapter .~~

Drafting Note: Section 21-2 is being repealed by this recodification.

~~§ 21-23. Expenses; supervision by Commission.—The Commission shall pay all expenses for the issuance of such notices and the conduct of such hearings and shall supervise the conduct of such hearings, and shall issue appropriate regulations governing the conduct of such hearings.~~

Drafting Note: Since the Board operates under DCHR, this section appears unnecessary.

~~§ 21-27 10.1-515 . Composition of governing body.—If the Commission shall determine Board determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, and the proposed district is in fact created, then its governing body shall be a board of district directors appointed or elected, and may include members of the governing body of a local government, in the number and manner specified as follows:~~

~~(1) . If the district embraces one county or independent city, or less than one county or independent 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 Commission Board .~~

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

Drafting Note: "District directors" are referred to in this section to avoid confusion with the Director of DCHR. Since city is defined in proposed § 10.1-500 it appears that the term "independent city" is not necessary.

~~§ 21-27.1. Transitional provisions.—On June 26, 1970, supervisors for soil and water conservation districts then in existence shall be thereafter known and designated as directors within the meaning and for the purpose of this chapter. All such supervisors shall serve as directors for the remainder of their respective terms of office unless their status is affected by the terms of § 21-27.2. Upon the expiration of the terms of office of those directors previously elected as supervisors, the composition of boards of directors shall be as set forth in § 21-27.~~

Drafting Note: This section appears obsolete.

~~§ 21-27.2 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 ~~will~~ shall remain in effect until the ~~term~~ terms of office of the present elected members expire. Upon the transfer of a county or counties and/ or city or cities , or parts thereof, from one district to another district, 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. At the option of the petitioners, a petition may ~~pray~~ request that a proposed transfer be treated as a merger or division for the purpose of this section, and the Commission 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 counties and/ or city or cities , 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 for terms of office as hereinafter provided. If the organization of ~~such~~ the new district is completed in such time that district directors may be nominated for election in the general election in November of the same calendar year in which ~~such~~ the district was organized, one district director shall be appointed for a one-year term of office of one year , and one district director shall be appointed for a two-year term of office of two years . Appointments of the other district directors shall be made for terms to expire on December ~~thirty-first~~, 31 of the year in which the district is organized. If the organization of ~~such~~ the new district is not completed in such time so that district directors may be nominated for election in the general election in November of the same calendar year in which such district is organized, one district director shall be appointed for a two-year term of office of two years , and one district director shall be appointed for a three-year term of office of three years . Appointments of the other district directors shall be made for terms to expire on December ~~thirty-first~~, 31 of the year following the year in which the district was organized.~~

{ 3 } . Upon the division of an existing district, to create a new district, all elected ~~and~~ or appointed *district* directors residing within the territory to be divided from the existing district shall be appointed as directors of the new district for terms of office as hereinafter provided. If the organization of ~~such~~ the new district is completed in such time that *district* directors may be nominated for election in the general election in November of the same calendar year in which ~~such~~ the district is organized, one *district* director shall be appointed for a *one-year* term of office of *one year* , and one *district* director shall be appointed for a *two-year* term of office of *two years* . If there be are any other *district* directors residing within the territory divided, their appointments shall be made for terms to expire on December ~~thirty-first~~, 31 of the year in which the district is organized. If the organization of ~~such~~ the new district is not completed in such time so that *district* directors ~~shall~~ may be elected in the general election in November of the same calendar year in which such district is organized, one *district* director shall be appointed for a *two-year* term of office of *two years* , and one *district* director shall be appointed for a *three-year* term of office of *three years* . If there be are any other *district* directors residing within the territory divided, their appointments shall be made for terms to expire on December ~~thirty-first~~, 31 of the year following *the year* in which the district was organized.

This section shall not be construed as broadening or limiting the size of a governing body of a district as prescribed by § ~~21-27~~ 10.1-515 . If the operation of this section results in a governing body larger or smaller than the appropriate size permitted by § ~~21-27~~ 10.1-515 , then such a variation, if not otherwise corrected by operation of this section, shall be cured with the next general election after the transfer, merger, or division in which all those elected directors prescribed by § ~~21-27~~ 10.1-515 may be elected.

Drafting Note: No change in the law.

§ ~~21-28~~ 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 ~~Commission Board~~ ; and authorized by the ~~Commission Board~~ to do so, shall present to the Secretary of the Commonwealth an application signed by them, which shall set forth ~~(and such application need contain no detail other than the mere recitals)~~ : (1) That (i) that a petition for the creation of the district was filed with the Virginia Soil and Water Conservation ~~Commission Board~~ pursuant to the provisions of this chapter, and that the proceedings specified in this chapter were ~~had pursuant to such petition conducted~~ ; (ii) that the application is being filed in order to complete the organization of the district as a ~~governmental~~ *political* subdivision under this chapter; and (iii) that the ~~Commission 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 which is ~~proposed for~~ of the district; and (vii) the location of the principal office of the *district* directors of the ~~district~~ . The application shall be subscribed and sworn to by the two *district* directors authorized by the ~~Commission Board~~ to make such application before an officer authorized by the laws of ~~this State~~ *the Commonwealth* to take and certify oaths ; who shall certify upon the application that he personally knows the directors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence . The application shall be accompanied by a *certified* statement by the ~~Commission~~, which shall certify ~~(and such statement need contain no detail other than the mere recitals)~~ that a petition was filed; notice issued; and hearing held as aforesaid; that the ~~Commission~~ did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a hearing held; that thereafter the ~~Commission~~ did duly determine that the operation of the proposed district is administratively practicable and feasible ~~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 ~~Commission Board~~ .

In the event that *If* the creation of a district by any means authorized by this chapter 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 or districts~~ to be dissolved, for the discontinuance of such ~~districts~~ *district* , contingent upon the creation of the new district. ~~Such~~ *The* application for discontinuance, duly verified, shall simply state that the lands encompassed in ~~such~~ *the* district to be dissolved shall be included within the territory of the district created. ~~Such~~ *The* application for discontinuance of such ~~districts~~ *district* shall be accompanied by a *certified* statement by the ~~Commission~~, which shall certify ~~(and such statement need contain no detail other than the mere recital)~~ that a petition ~~(or petitions)~~ was filed; notice issued; and hearing held; that the ~~Commission~~ did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil and water conservation district to function in the territory of each district to be dissolved and that such territory shall be encompassed within the district created, and that

the Commission did define the boundaries of the district created; that thereafter the Commission did duly determine that the operation of the district created is administratively practicable and feasible 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 boundary boundaries of each district dissolved and shall set forth the boundaries of the district created as defined by the Commission Board . The Secretary of the Commonwealth shall issue to the directors of each district a certificate of dissolution and shall record such 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 with by a certified statement by the Commission certifying Board that the boundaries have been changed in accordance with the provisions of this chapter. Such The statement by the Commission Board shall define the new boundary line in such a manner as in the judgment of the Commission shall be adequate to describe such the boundary changes of districts. When the application and statement have been filed with the Secretary of the Commonwealth, the change of boundary shall be decreed 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.

Drafting Note: Several lengthy provisions restating the process for creating a district are reduced for clarity.

§ ~~21-20~~ 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 with to that of any other soil and water conservation district of this 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 shall find finds that the name proposed for the district is identical with to that of any other soil and water conservation district of this State , or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the Virginia Soil and Water Conservation Commission Board , which shall thereupon submit to the Secretary of the Commonwealth a new name for the district ; which shall not be subject to such defects . Upon receipt of such the new name, free of such defects, 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 governmental political subdivision of this State and a public body corporate and politic 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 such the certificate with the application and statement. The boundaries of such the district shall include the territory as determined by the Commission as aforesaid Board , but shall not include any area included within the boundaries of another soil and water conservation district organized under the provisions of this chapter , except in those cases otherwise provided for in this article. The name of any soil and water conservation 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 such the resolution to the Commission Board and, if the Commission Board concurs, it shall present the resolution, together with a certified statement certifying its concurrence that it concurs , to the Secretary of the Commonwealth who ; if it be free from such defects as outlined herein, shall file the resolution and issue a new { or amended } certificate of organization.

Drafting Note: No change in the law.

§ ~~21-30~~ 10.1-519 . Renewal of petition after disapproval or denial.—After six months shall have expired from the date of the disapproval or denial of any such petition ; or its denial on the ground that there is no need for a soil and water conservation district to function in the territory considered at the hearing, or denial on the ground that operation of a proposed district is not administratively practicable and feasible , subsequent petitions covering the same or substantially the same territory may be filed with the Commission Board as provided in this chapter.

Drafting Note: No change in the law.

§ ~~21-31.2~~ 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 or districts to form a new district or to add to an existing district or districts , all contracts ; in effect at the time of said the consummation, affecting or relating to the territory transferred, merged, or divided, to which the governing body of the

district or districts from which such territory was acquired is a party shall remain in force and effect for the period provided in such the contracts ; and such rights . 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.

Drafting Note: No change in the law.

§ 21-31.3 10.1-521 . Determination of status of district boundaries upon annexation or consolidation.— It is herein provided that upon:

(1) The annexation or consolidation of a part of a county, such county being included within a district, with a city, town, or county of which no part is within a district; or

(2) Upon the annexation or consolidation of a county or a part of a county, such county or part thereof included within a district, with a city, town, or county of which all or any part of such city, town, or county is included within another district; or

(3) Upon the consolidation of two or more cities, or towns, all or any part of such city or cities being included in more than one district; or

(4) Upon the annexation or consolidation of an entire county, city, or town ; such county, city, or town included within a district, with a county, city, or town not included within a district; and/or

(5) Any other such cases as may occur; the Commission may in its discretion relocate and/or redefine district boundaries of its own motion pending or subsequent to annexation or consolidation, notwithstanding the provisions of § 21-12.2. In the event that *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 Commission Board determines of on its own motion to relocate and/ or redefine district boundaries, the Commission Board shall cause serve written notice of such its determination, containing the full terms of the proposed relocation and/ or redefinition, to be served on the governing body of each district or districts , county or counties , city and town or towns, city or cities affected by the relocation and/ or redefinition of boundaries. If within forty-five days from the date of service of such notice each such governing body affected approves the Commission's Board's action by resolution of a majority of the members, the Commission Board may then proceed to act on its motion without a public hearing.

Drafting Note: Since the section provided that the Board could redefine boundaries subsequent to any annexation or consolidation it is not necessary to list various types of annexations and consolidations. "Or" was changed to "and" in the second part of this section.

§ 21-32 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, and/ or renamed, in accordance with the provisions of this chapter upon proof of the issuance of the aforesaid certificate by the Secretary of the Commonwealth. A copy of such certificate duly certified by the Secretary of the Commonwealth shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the issuance and contents thereof.

Drafting Note: No change in the law.

§ 21-33 10.1-523 . Nominating petition may be filed with Commission petitions; notice of election for district directors .— A. Within thirty days after the date of issuance by the Secretary of the Commonwealth of a certificate of organization of a soil and water conservation district, but not later than a date set by the Commission Board , nominating petitions may be filed with the Commission Board to nominate candidates for elected directors of such districts. Nominating petitions for elected directors of existing districts shall be filed with the Commission Board no later than a date set by the Commission Board . Notice of the date for filing such petitions and the time of the election shall be published in a newspaper of general circulation within the district at least thirty days before the filing date. The Commission shall have authority to Board may extend the time during which nominating petitions may be filed.

§ 21-34. Twenty-five or more registered voters must sign petition.— No such B. A nominating petition shall not be accepted by the Commission Board , unless it shall be is subscribed by twenty-five or more registered voters residing within the boundaries of such the district.

§ 21-35. More than one petition may be signed.— C. Registered voters may sign more than one such nominating petition to nominate more than one candidate for district director.

~~§ 21-36. Commission to fix time and give notice of election.—~~ D. The Commission Board shall fix the time and give due notice of an election to be held for the election of *district* directors for the district .

Drafting Note: Since existing §§ 21-34 through 21-36 all relate to the nomination and election of district directors, they are combined into one section.

~~§ 21-37 10.1-524 . Names of nominees furnished electoral board; how ballots printed, etc.—~~The names of all nominees from each county or city or parts thereof, on behalf of whom such nominating petitions have been filed within the time herein designated, shall be furnished to the secretary of the electoral board of the respective county or city : The names of such nominees and shall be printed upon ballots ; ~~which~~ . 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.

Drafting Note: No change in the law.

~~§ 21-38 10.1-525 . Canvassing returns.—~~If the district ~~embrace~~ embraces more than one county or city, either in whole or in part, the result of the election shall be canvassed by the State Board of Elections ; ~~if~~ . If the election be held at any other time than that fixed for the general election in November, the canvass shall be made as in the case of a special election to fill a vacancy.

Drafting Note: No change in the law.

~~§ 21-39 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 ~~such~~ the election for their respective nominees.

Drafting Note: No change in the law.

~~§ 21-40 10.1-527 . Determination of candidates elected.—~~If the district embraces one county or ~~independent~~ city, or less than one county or ~~independent~~ city, the three candidates who shall receive the largest number ; ~~respectively~~, of the votes cast in ~~such~~ the election shall be elected directors for ~~such~~ the district.

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

Drafting Note: No change in the law.

~~§ 21-41 10.1-528 . Expenses and publication of results.—~~The expenses of such elections shall be paid by the counties or cities concerned ; ~~provided that~~ . However, if the election be held at any other time than that fixed for the general election in November, ~~such~~ the expenses shall be paid by the Commission Board . The State Board of Elections shall publish, or ~~cause to be~~ have published within the district, the results of the election.

Drafting Note: No change in the law.

~~§ 21-42 10.1-529 . Directors~~ 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 ~~hereinabove~~ in this article .

~~§ 21-43. Qualifications of appointed directors.—~~ The two *district* directors appointed by the Commission 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 ~~hereunder~~ . 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.

Drafting Note: Existing §§ 21-42 and 21-43 are merged to form this section.

~~§ 21-44 10.1-530 . Designation of chairman ; terms of office; filling vacancies .—~~ A. The *district* directors shall designate a chairman and may ; ~~from time to time~~, change such designation.

~~§ 21-45. Terms of office; filling vacancies. B.~~ The term of office of each *district* director shall be three years, except that the appointment of the first directors shall be for terms of office to provide for one appointment to be made in each year in which there is no election for directors within the district. 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 § 21-27 or the preceding sections provisions of this article ; ~~whichever~~ is applicable .

C. A vacancy ~~on the board~~ 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 Commission pursuant to § 21-51 Board . In the event of a vacancy from any of such causes, or otherwise, such Any vacancy shall be filled by an appointment made by the Commission. Vacancies shall be filled Board for the unexpired term. The Commission Board may fill vacancies in elective district directors' positions by appointment 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 Commission Board may appoint directors to fill the vacancies of elected directors prescribed by § 21-27 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 § 21-27 10.1-515 take office after the next general election at which directors for the entire district are selected.

Drafting Note: Existing sections 21-44 and 21-45 are combined since they both relate to service by the district directors.

§ 21-46 10.1-531 . Quorum and expenses.—A majority of the district directors shall constitute a quorum and the concurrence of a majority of the directors in any matter within their duties of those present and voting shall be required for its determination all determinations . A district director shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

Drafting Note: It was provided that a concurrence of a majority of those present and voting, rather than a concurrence of a majority shall be required for all determinations.

§ 21-47 10.1-532 . Employment of officers, agents and employees.—The district directors may employ a secretary-treasurer, whose qualifications shall be approved by the Commission 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.

Drafting Note: No change in the law.

§ 21-48 10.1-533 . Delegation of powers.—The district directors may delegate to their chairman ; or to one or more district directors, or to one or more agents ; or employees such powers and duties as they may deem proper.

Drafting Note: No change in the law.

§ 21-49 10.1-534 . Information furnished Commission Board .— The district directors shall furnish to the Virginia Soil and Water Conservation Commission Board or Department , upon request, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as that they shall adopt or employ, and such other information concerning their activities as it the Board or Department may require in the performance of its duties under this chapter.

Drafting Note: Changed "Commission" to "Board" and "Department".

§ 21-50 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; shall (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 shall (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.

Drafting Note: No change in the law.

§ 21-51 10.1-536 . Removal from office.—Any district director may be removed by the Virginia Soil and Water Conservation Commission Board upon notice and hearing for neglect of duty or malfeasance in office, but for no other reason, or may be removed in accordance with the provisions of general law.

Drafting Note: Language that appears contradictory was removed.

§ 21-52 10.1-537 . Representatives of governing bodies to be invited to consult with directors.—The district directors shall invite the legislative body of any municipality or county 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 municipality or county locality .

Drafting Note: No change in the law.

§ 21-53 10.1-538 . Body politic and corporate District is political subdivision .—A soil and water conservation district organized under the provisions of this chapter article shall constitute

a governmental political subdivision of this State, and a public body corporate and politic, exercising public powers; and such district, and the directors thereof, in addition to the powers granted in other sections of this chapter, shall have the powers set out in the following sections of this article *Commonwealth* .

Drafting Note: The term "governmental subdivision" is changed to "political subdivision". The words "public body corporate and politic" seem unnecessary and were stricken.

§ 21-54 10.1-539 . Surveys and dissemination of information.— ~~They shall have power~~ *Districts are authorized* to (i) conduct surveys, investigations, and research relating to the character of 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 ; ~~to~~ ; (ii) publish the results of such surveys, investigations, or research ; ; and ~~to~~ (iii) disseminate information concerning such preventive and control measures and works of improvement ; ~~provided, however, that~~ . However, in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this State ~~the Commonwealth~~ or any of its agencies, or with the United States or any of its agencies .

Drafting Note: No change in the law.

§ 21-55 10.1-540 . Demonstrational projects.— ~~They shall have power~~ *Districts are authorized* to conduct demonstrational projects within the district on lands owned or controlled by this State ~~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 ; ~~in order~~ . *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.

Drafting Note: No change in the law.

§ 21-56 10.1-541 . Preventive and control measures.— ~~They shall have power~~ *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 ; ~~and the measures listed in subsection (c) of § 21-2,~~ on lands owned or controlled by this State ~~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.

Drafting Note: Reference to § 21-2 is deleted since that section is proposed to be deleted.

§ 21-57 10.1-542 . Financial aid to agencies and occupiers.— ~~They shall have power~~ *Districts are authorized* to ~~cooperate, or enter into agreement with, and agreements,~~ within the limits of available appropriations ~~duly made available to it by law~~ , to ~~furnish as a gift or loan give, lend or otherwise furnish~~ financial or other aid to any governmental or other agency, governmental or otherwise, or any occupier of lands within the district, ~~in the carrying on of~~ 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.

Drafting Note: No change in the law.

§ 21-58 10.1-543 . Acquisition, improvement and disposition of property.— ~~They shall have power~~ *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; ~~to~~ (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 ~~chapter~~ *article* ; and ~~to~~ (iii) sell, lease, or otherwise dispose of any of its ~~their~~ property or interests therein in furtherance of the purposes and the provisions of this chapter.

Drafting Note: No change in the law.

§ 21-59 10.1-544 . Making material and equipment available.— ~~They shall have power~~ *Districts are authorized* to make available, on such terms as ~~it~~ they shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings and such other material or equipment ; *as that* will assist such land occupiers to ~~carry~~

on operations upon their lands for the conservation of conserve soil resources and for the prevention and , to prevent and control of soil erosion and for flood prevention to prevent floods or to carry out the agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water.

Drafting Note: No change in the law.

§ ~~21-60~~ 10.1-545 . Construction, improvement, operation and maintenance of structures.— ~~They shall have power~~ *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.

Drafting Note: No change in the law.

§ ~~21-61~~ 10.1-546 . Development of programs and plans.— ~~They shall have power~~ *Districts are authorized* to develop comprehensive programs and plans for the conservation of soil resources and , for the control and prevention of soil erosion and , for flood prevention or for agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water within the district ; ~~which~~ . *Such programs and plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of 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 ; ~~and, after~~ . *After* such programs and plans have been approved by the ~~Virginia Soil and Water Conservation Commission, 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.

Drafting Note: No change in the law.

§ ~~21-62~~ 10.1-547 . Acquisition and administration of projects; acting as agent for United States, etc.; acceptance of gifts.— ~~They~~ *Districts shall have the power following additional authority:*

to 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 this State the Commonwealth or any of its agencies; to*

2. *To manage, as agent of the United States or any of its agencies, or of this State 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; to*

3. *To act as agent for the United States ; or any of its agencies, or for this State 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; to*

4. *To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this State 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.*

Drafting Note: No change in the law.

§ ~~21-63~~ 10.1-548 . Contracts; rules.— ~~They shall have power~~ *Districts are authorized* to have a seal ; ~~which seal shall be judicially noticed; ;~~ to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments ; necessary or convenient to the exercise of its *their* powers; to make, ~~and from time to time~~ amend and repeal ; ~~rules and~~ regulations not inconsistent with this chapter, to ~~carry into~~ effect its *their* purposes and powers.

Drafting Note: No change in the law.

§ ~~21-4~~ 10.1-549 . Cooperation between districts.—~~The directors of any two or more districts organized under the provisions of this chapter may cooperate with one another~~ in the exercise of any or all powers conferred in this chapter.

Drafting Note: No change in the law. The definition of “district” provides that a district is organized pursuant to this chapter; there is no need to repeat the definition in this section.

§ ~~21-5~~ 10.1-550 . State agencies to cooperate.—~~Agencies of this State the Commonwealth which shall have jurisdiction over ; or be charged with administration of,~~ *administer* any state-owned

lands, and agencies of any county, or other governmental political subdivision of the State Commonwealth ; which shall have jurisdiction over ; or be charged with the administration of, administer any county-owned or other publicly owned lands ; lying within the boundaries of any district organized hereunder , shall cooperate to the fullest extent with the district directors of such districts in the effectuation of programs and operations undertaken by the directors under the provisions of pursuant to this chapter. The district directors of such districts shall be given free access to enter and perform work upon such public-owned lands. The provisions of land-use regulations adopted pursuant to § 21-66 shall have the force and effect of law over all such publicly owned lands, and shall be in all respects observed by the agencies administering such lands.

Drafting Note: Last sentence is stricken since provision referred to (§ 21-66) is proposed to be repealed.

§ 21-64 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 this State 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 as that will tend to prevent or control erosion and prevent floodwaters and sediment damages thereon.

Drafting Note: No change in the law.

§ 21-65 10.1-552 . Renting machinery and equipment.— The district directors shall have authority Districts are authorized to rent the machinery and other equipment made available to them by the Commission Department to the governing bodies of counties, and cities , to individuals, or to 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.

Drafting Note: No change in the law.

§ 21-106 10.1-553 . Petition by landowners.—Any time after two years after the organization of a district under the provisions of this chapter , any twenty-five owners of land lying within the boundaries of such the district may file a petition with the Virginia Soil and Water Conservation Commission praying Board requesting that the operations of the district be terminated and the existence of the district discontinued.

Drafting Note: No change in the law.

§ 21-107 10.1-554 . Hearings.—The Commission Board may conduct such public meetings and public hearings upon such the termination petition as may be necessary to assist it in the considerations thereof.

Drafting Note: No change in the law.

§ 21-108 10.1-555 . Referendum.—Within sixty days after such a termination petition has been received by the Commission Board it shall give due notice of the holding of a referendum and shall supervise such the referendum, and issue appropriate regulations governing the conduct thereof ; the question to be submitted by ballots upon which the words "For terminating the existence of the (name of the soil and water conservation district to be here inserted)" and "Against terminating the existence of the (name of the soil and water conservation district to be here inserted)" shall be printed, with a square before each proposition and a direction to insert a check mark (A) or cross mark (X or +) in the square before one or the other of such propositions as the voter may favor or oppose discontinuance of such district . 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 owners of lands lying registered voters residing within the boundaries of the district shall be eligible to vote in such the referendum. Only such landowners shall be eligible to vote. No informalities in the conduct of such the referendum or in any related matters relating thereto shall invalidate such the referendum or the result thereof if proper notice thereof shall have been given substantially as herein provided and such if the referendum shall have been fairly conducted.

Drafting Note: The description of the ballot has been changed to conform with other referendums in the Code. Provisions allowing only landowners to vote were revised to allow all registered voters to vote.

§ 21-109 10.1-556 . Determination of Commission Board .—The Commission Board shall publish

the result of ~~such~~ 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 ~~Commission shall determine~~ *Board determines* that the continued operation of ~~such~~ the district is administratively practical and feasible, it shall record ~~such~~ the determination and deny the petition. If the ~~Commission shall determine~~ *Board determines* that the continued operation of ~~such~~ the district is not administratively practicable and feasible, it shall record ~~such~~ its determination and shall certify ~~such~~ the determination to the directors of the district *directors* . In making ~~such~~ its determination the ~~Commission~~ *Board* shall give due regard and weight to the attitudes of the owners of lands lying within the district, the number of landowners eligible to vote in such referendum who shall have voted, *consider* the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within ~~such~~ the district, and ~~such~~ other relevant economic and social factors as may be relevant to such determination having due regard to the legislative findings set forth in § 21-2; provided, however, that the ~~Commission~~ . *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 shall have been cast in favor of the continuance of such district.

Drafting Note: Outdated provisions were removed.

§ 21-110 10.1-557 . Duty of directors after certification of ~~Commission~~ *Board* .—Upon receipt receiving from the Virginia Soil and Water Conservation Commission of a *Board* certification that the ~~Commission~~ *Board* has determined that the continued operation of the district is not administratively practicable and feasible ; pursuant to the provisions of this article , the *district* directors shall ~~forthwith~~ 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 over the proceeds of ~~such~~ the sale to be covered into the state treasury. The *district* directors shall ~~thereupon~~ then file an application, duly verified, with the Secretary of the Commonwealth, for the discontinuance of ~~such~~ the district, and shall transmit with ~~such~~ the application the certificate of the ~~Commission~~ *Board* setting forth the determination of the ~~Commission~~ *Board* that the continued operation of ~~such~~ 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 in this section 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* directors a certificate of dissolution and shall record ~~such~~ the certificate in an appropriate book of record in his office.

Drafting Note: No change in the law.

§ 21-111 10.1-558 . Effect of issuance of certificate of dissolution.—Upon issuance of a certificate of dissolution under the provisions of this article , all ordinances and regulations ~~therefore~~ previously adopted and in force within such district shall be of no further force and effect . All contracts ~~therefore~~ entered into, to which the district or *district* directors are parties, shall remain in force and effect for the period provided in ~~such~~ the contracts. The Virginia Soil and Water Conservation Commission *Board* shall be substituted for the district or *district* directors as party to ~~such~~ the contracts. The ~~Commission~~ *Board* shall be entitled to all benefits and subject to all liabilities under ~~such~~ 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 of the ~~district~~ would have had. ~~Such dissolution shall not affect the lien of any judgment entered under the provisions of § 21-88, nor the pendency of any action instituted under provisions of § 21-83, and the Commission shall succeed to all the rights and obligations of the district or directors as to such liens and actions.~~

Drafting Note: Reference to §§ 21-83 and 21-88 are stricken since those sections are removed as obsolete.

§ 21-112 10.1-559 . Petitions limited to once in five years.—The Virginia Soil and Water Conservation Commission *Board* shall not entertain petitions for the discontinuance of any district ~~nor~~ , conduct elections upon such petitions ~~nor~~ or make determinations pursuant to such petitions in accordance with the provisions of this chapter more often than once in five years.

Drafting Note: No change in the law.

§ 21-66. Power of directors to formulate regulations.—The directors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and water resources and preventing and controlling soil erosion. The provisions contained in this article to develop comprehensive plans and adopt and implement regulations governing the use of nonagricultural lands shall not apply in any county, city or town which has adopted or hereafter adopts subdivision or development control ordinances.

§ 21-67. Hearings.—The directors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work.

§ 21-68. Referendum required.—The directors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the occupiers of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the directors have considered the result of such referendum.

§ 21-69. Ordinances.—The proposed regulations shall be embedded in a proposed ordinance or ordinances. Copies of each such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum.

§ 21-70. Contents of notices of referendum.—The notices of the referendum shall recite the contents of each such proposed ordinance, or shall state where copies of each such proposed ordinance may be examined.

§ 21-71. Ballots.—The question as to each ordinance shall be submitted by ballots, upon which the words "For approval of proposed ordinance No. ..." prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No. prescribing land-use regulations for conservation of soil and prevention of erosion" shall be printed, with a square before each proposition and a direction to insert a check mark (✓) or cross mark (✕ or +) in the square before one or the other of the propositions as the voter may favor or oppose approval of such proposed ordinance.

§ 21-72. Supervision of referendum.—The directors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof.

§ 21-73. Persons eligible to vote.—All occupiers of lands within the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

§ 21-74. Informality in conduct of referendum.—No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate such referendum or the result thereof if notice thereof shall have been given substantially as herein provided and such referendum shall have been fairly conducted.

§ 21-75. Two-thirds vote required.—The directors shall not have authority to enact any such proposed ordinance into law unless at least two-thirds of the votes cast in such referendum shall have been cast for approval of the proposed ordinance.

§ 21-76. Directors not required to act by vote.—The approval of any proposed ordinance by two-thirds of the votes cast in such referendum shall not be deemed to require the directors to enact such proposed ordinance into law.

§ 21-77. Regulations have effect of law.—Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this article by the directors of any district shall have the force and effect of law in the district and shall be binding and obligatory upon all occupiers of lands within such districts.

§ 21-78. Amendment or repeal of regulations.—Any occupier of land within such district may at any time file a petition with the directors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the directors under the provisions of this article shall be amended, supplemented, or repealed. Land-use regulations prescribed in an ordinance adopted pursuant to the provisions of this article shall not be amended, supplemented, or repealed, except in accordance with the procedure prescribed in this article for adoption of land-use regulations. Reference on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six months.

§ 21-79. What regulations may include.—The regulations to be adopted by the directors under the provisions of this article may include:

(1) Provisions requiring the carrying out of necessary engineering operations, including the construction of terraces, terrace outlets, check dams, dikes, ponds, ditches, and other necessary structures;

(2) Provisions requiring observance of particular methods of cultivation including contour cultivating, contour furrowing, lister furrowing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation, and reforestation;

(3) Specifications of cropping programs and tillage practices to be observed;

(4) Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

(5) Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in § 21-2.

§ 21-80. Regulations to be uniform.—The regulations shall be uniform throughout the territory comprised within the district except that the directors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, cropping and tillage practices in use, and other relevant factors, and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type.

§ 21-81. Copies of regulations to be made available to occupiers.—Copies of land-use regulations adopted under the provisions of this article shall be printed and made available to all occupiers of lands lying within the district.

§ 21-82. Right to go on land to determine observance of regulations.—The directors shall have authority to go upon any lands within the district to determine whether land-use regulations adopted under the provisions of this article are being observed.

§ 21-83. Directors may file bill in equity when regulations not observed.—When the directors of any district shall find that any of the provisions of land-use regulations prescribed in an ordinance adopted in accordance with the provisions of this article are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, the directors may file a bill in equity in the circuit court of the county, or in a court having equity jurisdiction in the city, in which such lands, or the greater part thereof, are located.

§ 21-84. Contents of bill.—The bill shall be duly verified, and shall set forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier or owner to observe such regulations, and to perform the particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the directors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier or owner of such land provided the occupier is financially able to pay the costs and expenses. If it would be a burden upon him to do so, then the costs and expenses shall be borne by the party performing the work, or to be paid for from funds received from some other source or sources.

§ 21-85. Taking testimony.—If it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

§ 21-86. Decision of court.—The court may dismiss the bill, or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the directors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five per centum per annum, from the occupier of such lands.

§ 21-87. Joinder of owner.—In all cases where the person in possession of lands, who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such

lands shall be joined as party defendant.

§ 21-88. Costs.—The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the directors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five per centum per annum until paid, together with the costs of suit. Provided, however, that no costs or charges shall be allowed by the court against the property on which such work is done as will result in confiscation of the land, and improvements thereon, or will be in excess of the value of the improvements to the property by reason of the project, as determined by the court, and the court may take testimony as provided in this article; and provided, further, should this restriction in costs and charges assessed against the landowner prevent control of erosion on the lands of others within the district, which the project is to be had from such funds as may be available for this purpose. If the landowner has a reasonable objection or is financially unable to pay for same, then the governing body of the county or city in which the land or the greater part thereof is situated shall first certify that in its opinion the objection is not reasonable or the owner is financially able to pay, before any cost or costs for doing such work shall be assessed against him; otherwise the cost for doing such work shall be paid by the parties doing the work or from some other source or sources. An appeal from the action of the governing body may be taken by either party to the proceeding to the circuit court of the county or the corporation court of the city in which the land or the greater part thereof lies, in accordance with § 21-105.

Drafting Note: Existing §§ 21-66 through 21-89 relate to land use regulations. Since localities must have subdivision ordinances, these provisions appear obsolete and are stricken at the suggestion of DCHR.

Article 4.

Erosion and Sediment Control Law.

§ 21-89.1. Short title.—This article shall be known as the “Erosion and Sediment Control Law.”

§ 21-89.2. Findings of General Assembly.—The General Assembly has determined that the lands and waters comprising the watersheds of the State are great natural resources; that as a result of erosion of lands and sediment deposition in waters within the watersheds of the State, said waters are being polluted and despoiled to such a degree that fish, aquatic life, recreation and other uses of lands and waters are being adversely affected; that the rapid shift in land use from agricultural to nonagricultural uses has accelerated the processes of soil erosion and sedimentation; and further, it is necessary to establish and implement, through the Virginia Soil and Water Conservation Commission, hereinafter referred to as the “Commission,” and the soil and water conservation districts, hereinafter referred to as “districts,” in cooperation with counties, cities, towns, other subdivisions of this State, and other public and private entities, a statewide coordinated erosion and sediment control program to conserve and to protect the land, water, air and other natural resources of the Commonwealth.

Drafting Note: Existing §§ 21-89.1 and 21-89.2 are stricken as unnecessary.

§ 21-89.3 10.1-560 . Definitions.—As used in this article, unless the context clearly indicates otherwise requires a different meaning :

“Conservation plan,” “erosion and sediment control plan,” or “plan,” mean a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

(a) “Land-disturbing activity” shall mean means any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the State Commonwealth , including, but not limited to, clearing, grading, excavating, transporting and filling of land, other than federal lands, except that the term shall not include:

(i) such minor 1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs and maintenance work;

(ii) individual 2. Individual service connections;

~~(iii)~~ ~~construction~~ 3. *Construction* , installation, or maintenance of electric and telephone utility lines;

~~(iib)~~ ~~installation~~ 4. *Installation* , maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street or sidewalk provided ~~such~~ *the* land-disturbing activity is confined to the area of the road, street or sidewalk which is hard surfaced;

~~(iii)~~ ~~septic~~ 5. *Septic* tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

~~(iv)~~ ~~surface~~ 6. *Surface* or deep mining;

~~(iva)~~ ~~exploration~~ 7. *Exploration* or drilling for oil and gas including the well site, roads and off-site disposal areas;

~~(v)~~ ~~neither shall it include tilling~~ 8. *Tilling* , planting, or harvesting of agricultural, horticultural, or forest crops; *including engineering operations as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage and land irrigation.*

~~(vi)~~ ~~construction~~ 9. *Construction* , repair or rebuilding of the tracks, right-of-way, bridges, communication facilities and other related structures and facilities of a railroad company;

~~(vii)~~ ~~preparation~~ 10. *Preparation* for single-family residences separately built, unless in conjunction with multiple construction in subdivision development;

~~(viii)~~ ~~disturbed~~ 11. *Disturbed* land areas for ~~commercial or noncommercial~~ uses of less than 10,000 square feet in size; ~~provided, however, that~~ the governing body of the county, city, town or district ; may reduce this exception to a smaller area of disturbed land and/or qualify the conditions under which this exception shall apply;

~~(ix)~~ ~~installation~~ 12. *Installation* of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

~~(x)~~ ~~shore~~ 13. *Shore* erosion control projects on tidal waters recommended by the soil and water conservation districts in which the projects are located or approved by the Marine Resources Commission;

~~(xi)~~ ~~emergency~~ 14. *Emergency* work to protect life, limb or property, and emergency repairs; ~~provided that however,~~ if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the ~~requirement~~ *requirements* of the ~~local plan-approving authority or the Commission when applicable~~ .

“Local erosion and sediment control program” or “local control program” means an outline of the various methods employed by a district or locality to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement and evaluation.

~~(b)~~ *“Person” shall mean means* any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of ~~this State~~ *the Commonwealth* , any interstate body, or any other legal entity.

“Plan-approving authority” means the Board, the district or a county, city, or town, or a department of a county, city, or town, responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and for approving plans.

~~(e)~~ *“Town” shall mean an incorporated town.*

~~(d)~~ *“Conservation standards” or “standards” shall mean standards adopted by the Commission or the districts, counties, cities and towns pursuant to §§ 21-89.4 and 21-89.5, respectively, of this article.*

(e) "Specifications" shall mean the written procedures, requirements or plans to control erosion and sedimentation as officially adopted by the governing board or commission of a state agency or institution or by an agency's administrative head if there is no board or commission.

(f) "Conservation plan," "erosion and sediment control plan," or "plan," shall mean a document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

(g) "State erosion and sediment control program" or "State state program" shall mean means the program adopted administered by the Commission consisting of conservation standards, guidelines and eriteria Board pursuant to this article, including regulations designed to minimize erosion and sedimentation.

(h) "Local erosion and sediment control program" or "local control program" shall mean an outline or explanation of the various elements or methods employed by a district, county, city, or town to regulate land-disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as a local ordinance, policies and guidelines, technical materials, inspection, enforcement and evaluation.

(i) "Plan approving authority" shall mean the district or a county, city, or town, or a department of a county, city, or town, responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit or units of lands and shall approve such plan if the plan is determined to be adequate.

"Subdivision," unless otherwise defined in a local ordinance adopted pursuant to § 15.1-465, means the division of a parcel of land into three or more lots or parcels of less than five acres each for the purpose of transfer of ownership or building development, or, if a new street is involved in such division, any division of a parcel of land. The term includes resubdivision and, when appropriate to the context, shall relate to the process of subdividing or to the land subdivided.

"Town" means an incorporated town.

Drafting Note: The definitions of "conservation standards" and "specifications" are eliminated because the term "regulation" will be used in the article. "Board" was added as a "plan approving authority" because it currently approves plans. The definition of "subdivision" from § 15.1-430 is modified and repeated here because the Board uses that definition. "Commission" is changed to "Board" throughout this article. The definitions are placed in alphabetical order.

§ 21-89.4 10.1-561 . State erosion and sediment control program.— (a) A. The Commission Board shall establish minimum standards, guidelines and eriteria promulgate regulations for the effective control of soil erosion, sediment deposition and nonagricultural runoff which must be met in any control program in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) . To assist in the development of the program, the Commission shall seek the advice of the State Water Control Board (the opinion of the State Water Control Board shall be advisory only) and may seek the advice of other appropriate State and federal agencies and shall name an advisory board of not less than seven nor more than eleven members which shall include but not be limited to representatives of such interests as residential development and construction, nonresidential construction, and agriculture. At least two members of the advisory board shall be from the public at large having no direct pecuniary interest, and at least two members shall be from local governments.

(b) To implement this program, the Commission shall develop and adopt by July one, nineteen hundred seventy-four, guidelines for erosion and sediment control, which guidelines may be revised from time to time as may be necessary. In accordance with Chapter 1.1:1 of Title 9 of this Code, the Commission shall give due notice and conduct public hearings on the proposed guidelines or proposed change in existing guidelines before adopting or revising such guidelines. The guidelines for carrying out the program The regulations shall:

(1) 1. Be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the State Commonwealth , including, but not limited to, data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services;

(2) 2. Include such survey of lands and waters as may be deemed appropriate by the Commission Board or required by any applicable law to identify areas, including

multijurisdictional and watershed areas, with critical erosion and sediment problems; and

~~(3)~~ 3. Contain conservation standards for various types of soils and land uses, which standards shall include criteria, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.

~~(e)~~ B. The program and *guidelines regulations* shall be made available for public inspection at the office of the *Commission Department* .

Drafting Note: Obsolete language regarding the implementation of the program was eliminated. The program has been in existence since 1974. The Board will retain authority to promulgate regulations so that regulations can be revised.

§ 21-89.5 10.1-562 . Local erosion and sediment control programs.— ~~(a)~~ A. Each district in the Commonwealth, except as provided in subsection ~~(e)~~ C of this section, shall ~~within eighteen months after the adoption of the state guidelines, develop and adopt~~ have a soil erosion and sediment control program consistent with the state program and *guidelines regulations* for erosion and sediment control. ~~Districts adopting such programs shall do so pursuant to the provisions of the Administrative Process Act, Chapter 1.1:1 (§ 9-6.14:1 et seq.) of Title 9 of the Code of Virginia. To assist in developing its program, each district shall name an advisory committee of not less than seven nor more than eleven members which shall include but not be limited to representatives of such interests as residential development and construction, nonresidential construction, and agriculture. At least two members of the advisory board shall be from the public at large having no direct pecuniary interest, and at least two members shall be from local governments. Upon the request of a district the Commission shall assist in the preparation of the district's program. Upon adoption of its program, the district shall submit the program to the Commission for review and approval.~~

To carry out its program the district shall ; ~~within one year after the program has been approved by the Commission, establish~~ *adopt regulations* ; consistent with the state program and *guidelines, conservation standards for various types of soils and land uses, which standards shall include criteria, guidelines, techniques, and methods for the control of erosion and sediment resulting from land-disturbing activities.* Such *conservation standards* . *The regulations* may be revised from time to time as may be necessary. Before adopting or revising *conservation standards regulations* , the district shall ; ~~after giving~~ *give* due notice ; and conduct a public hearing on the proposed *conservation standards or proposed changes in existing standards or revised regulations except that a public hearing shall not be required when the district is amending its program to conform to revisions in the state program. However, a public hearing shall be held if a district proposes or revises regulations that are more stringent than the state program* . The program and *conservation standards regulations* shall be made available for public inspection at the principal office of the district.

~~(b)~~ B. In areas where there is no district, a county, city, or town shall ~~develop, adopt and carry out~~ *administer* the erosion and sediment control program and exercise the responsibilities of a district with respect thereto, as provided in this article ; ~~except that the provisions for an advisory committee shall not be mandatory~~ .

~~(e)~~ C. Any county, city, or town that ; ~~prior to July 1, 1975, has adopted its own erosion and sediment control program which has been approved by the Commission Board~~ shall be treated under this article as a county, city, or town which lies in an area where there is no district, whether or not such district in fact exists.

Any town, lying within a county which ~~adopts~~ *has adopted* its own erosion and sediment control program, must ~~either adopt its own program ; or adopt jointly with the county an erosion and sediment control become subject to the county program or authorize the county to adopt the program for the town~~ . If a town lies within the boundaries of more than one county, ~~such~~ *the* town shall be considered for the purposes of this article to be wholly within the county in which the larger portion of the town lies. Any county, city, or town ~~adopting~~ *with* an erosion and sediment control program may designate its department of public works or a similar local government department as the plan-approving authority or may designate the district as the plan-approving authority for all or some of the conservation plans.

~~(d)~~ D. If a district, ~~or county ; or city ; or town~~ not in a district, fails to submit a program to the ~~Commission within the period specified herein~~ *Board* , the ~~Commission Board~~ shall, after such hearings or consultations as it deems appropriate with the various local interests involved, develop and adopt an appropriate program to be carried out by such district, county ; ~~or city ; or town~~ . The ~~Commission~~ shall ~~do likewise with respect to any town lying within a county which adopts its own erosion and sediment control program and such town does not provide for land-disturbing activities within the town to be covered by a local control program.~~

(e) E. Any district, county, city or town which administers an erosion and sediment control program may charge applicants a reasonable fee to defray the cost of program administration, including costs associated with the issuance of grading or land-disturbing permits, plan review, and periodic inspection for compliance with erosion and sediment control plans ; ~~provided, that if charges for such costs are not made under any other law, ordinance, or program. Such fees The fee shall in no instance not exceed an amount commensurate with the services rendered , taking into consideration the time, skill and administrators' expense involved, or \$300, whichever is least less .~~

(f) Notwithstanding any other provision of this chapter, districts or localities which have adopted local erosion and sediment control programs shall not be required to conduct public hearings when amending their local programs to conform to any revisions in the state program. Districts or localities which choose to adopt conservation standards which are more stringent than the provisions of the state program, however, shall conduct a public hearing after giving due notice.

Drafting Note: Local control programs have been established for all nonfederal lands, so the time limitation and other requirements (advisory committee) for establishing a program are eliminated. In subsection C the words "prior to July 1, 1975" were removed so, as revised, all localities (not just those with programs approved prior to July 1, 1975) with their own programs will be treated as areas in which there is no district. Towns that do not have their own programs will be subject to the county program, rather than adopting the program jointly with the county. Subsection (f) is included in proposed subsection A.

~~§ 21-89-6 10.1-563 . Regulated land-disturbing activities ; submission and approval of control plan . - (a) A. Except as provided in subsections (e) and (f) of this section § 10.1-564 , no person may engage in any land-disturbing activity after the adoption of the conservation standards by the districts, counties, cities or towns until he has submitted to the district ; county, city, or town or locality an erosion and sediment control plan for such the land-disturbing activity and such the plan has been reviewed and approved by the plan-approving authority. Where land-disturbing activities involve lands under the jurisdiction of more than one local control program an erosion and sediment control plan may, at the option of the applicant, be submitted to the Commission Board for review and approval rather than submission to each jurisdiction concerned.~~

~~(b) Upon submission of an erosion and sediment control plan to a plan-approving authority or to the Commission:~~

~~(1) The plan-approving authority shall, within forty-five days, approve any such plan if it determines that the plan meets the conservation standards of the local control program and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and will conform to the provisions of this article;~~

~~(2) The Commission shall review plans submitted to it and shall within forty-five days approve any such plan if it determines that the plan is adequate in consideration of the Commission's guidelines and the conservation standards of the local control program or programs involved, and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article.~~

~~(c) The plan-approving authority or Commission must act on all plans submitted within forty-five days from receipt thereof by either approving said plan in writing or by disapproving said plan in writing and giving the specific reasons for its disapproval. When a plan submitted for approval under this section is found, upon review by the respective agency, to be inadequate, such agency shall specify such modifications, terms, and conditions as will permit approval of the plan and communicate these requirements to the applicant as herein required. B. The plan-approving authority shall review conservation plans submitted to it and grant written approval within forty-five days of the receipt of the plan if it determines that the plan meets the requirements of the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the conservation measures included in the plan and will conform to the provisions of this article.~~

~~When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within forty-five days. The notice shall specify the modifications, terms and conditions that will permit approval of the plan. If no action is taken by the plan-approving authority or Commission within the time specified above, the plan shall be deemed approved and the person authorized to proceed with the proposed activity.~~

~~(d)~~ C. An approved plan may be changed by the authority ~~which has that approved the plan~~ or by the Commission when it has approved the plan in the following cases:

~~(1)~~ 1. Where inspection has revealed the ~~inadequacy of the~~ *that the plan is inadequate* to accomplish the erosion and sediment control objectives of the plan, and appropriate modifications to correct the deficiencies of the plan are agreed to by the plan-approving authority and the person responsible for carrying out the plan; or

~~(2)~~ 2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article, are agreed to by the plan-approving authority and the person responsible for carrying out the plan.

~~(e)~~ Any person owning, occupying, or operating private agricultural, horticultural or forest lands shall not be deemed to be in violation of this article for land-disturbing activities resulting from the tilling, planting or harvesting of agricultural, horticultural or forest crops or products, or engineering operations under § 21-2 ~~(e)~~ of the Code of Virginia.

D. For the purposes of subsections A and B of this section, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of an erosion and sediment control plan shall be the responsibility of the owner.

Drafting Note: Current § 21-89.6 has been divided into two sections. Since all localities have provisions for conservation plans the section was revised to prohibit engaging in land-disturbing activity without approval, rather than engaging in land-disturbing activity after adoption of conservation plans without approval. Current subsections (b) and (c) were consolidated into one subsection B. Current subsection (e) was stricken at the suggestion of DCHR. It is somewhat duplicative of the exceptions to the definition of "land-disturbing activity" in § 21-89.3 (iv) (proposed § 10.1-560(8)). Also, existing § 21-2 is mainly legislative intent and is being repealed by this recodification. Current subsection (g) was relocated and will become subsection D.

~~(f)~~ § 10.1-564. *State agency projects.*— Any state agency that undertakes a project involving a land-disturbing activity shall file specifications *annually* or a conservation plan *for each project* with the ~~Commission~~ *Department* for review and written comments. The ~~Commission~~ *Department* shall have sixty days in which to comment and ~~such comment its comments~~ shall be binding on the state agency or the private business hired by the ~~State~~ *state* agency. Individual approval of separate projects is not necessary when approved specifications are followed.

~~The~~ *As on-site changes occur, the* state agency shall submit changes in the conservation plan or specifications as they occur to the ~~Commission~~ and shall submit specifications and plans at least *annually* for review ~~Department~~ .

~~Further, the~~ *The* state agency responsible for the land-disturbing activity shall ensure compliance with the approved plan or specifications.

~~(g)~~ For the purposes of subsections (a) and (b) of this section, when land-disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission and approval of an erosion and sediment control plan shall be the responsibility of the owner.

Drafting Note: This is subsection (f) of existing § 21-89.6. Existing subsection (g) was moved to proposed § 10.1-563 D.

§ 21-89.7 *10.1-565* . Approved plan required for issuance of grading, building, or other permits; security for performance.— ~~Upon the effective date of the adoption of the conservation standards by the districts, counties, cities or towns, when standards have not otherwise been adopted, no agency~~ *Agencies* authorized under any other law to issue grading, building, or other permits for activities involving land-disturbing activities may *not* issue any such ~~permits~~ *permit* unless the applicant ~~therefor~~ submits with his application ~~the an~~ approved erosion and sediment control plan or certification of such approved plan from the ~~local plan-approving authority or from the Commission where appropriate, as well as~~ *and* certification that ~~such~~ *the* plan will be followed. ~~Such agency, prior~~ *Prior* to issuance of any permit, ~~the agency~~ may also require ~~from any~~ applicant to *submit* a reasonable performance bond, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the agency, to ensure that measures could be taken by the ~~county, city or town~~ *agency* at the applicant's expense should he fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of him by ~~such~~ *the* approved plan as a result of his land-disturbing activity. Within sixty days of the completion of the land-disturbing activity, ~~such~~ *the* bond, cash escrow, letter of credit or other legal arrangement, or the unexpended or

unobligated portion thereof, shall be refunded to the applicant or terminated ; as the ease may be . These requirements are in addition to all other provisions of law relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

Drafting Note: The reference to the effective date of standards was removed since all districts and localities now have conservation standards.

§ 21-89.8 10.1-566 . Monitoring, reports and inspections.— (a) ~~Land-disturbing activities where permit is issued. -~~ With respect to approved plans for erosion and sediment control A. The plan-approving authority; or if a permit is issued in connection with land-disturbing activities which involve the issuance of a grading, building, or other permit, either the permit-issuing authority or plan-approving authority (i) shall provide for periodic inspections of the land-disturbing activity and (ii) may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan ; and to determine whether the measures required in the plan are effective in controlling erosion and sediment resulting from the land-disturbing activities . Notice of such right of inspection shall be included in the permit. The owner, occupier or operator shall be given notice of the inspection and an opportunity to accompany the inspectors. If the permit-issuing authority or plan-approving authority determines that the permittee has failed there is a failure to comply with the plan, the authority shall immediately serve notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified by the permittee in his the permit application or in the plan certification , or by delivery at the site of the permitted land-disturbing activities to the agent or employee of the permittee supervising such activities ; a notice to comply . Where the plan-approving authority serves notice, a copy of each notice shall also be sent to the issuer of the permit. Such The notice shall set forth specifically specify the measures needed to come into compliance comply with such the plan and shall specify the time within which such measures shall be completed. If the permittee fails to Upon failure to comply within the time specified, he may be subject to revocation of the permit ; furthermore, he may be revoked and the permittee or person responsible for carrying out the plan shall be deemed to be in violation of this article and upon conviction shall be subject to the penalties provided by the article § 10.1-569 .

(b) Other regulated land-disturbing activities.—With respect to approved plans for erosion and sediment control in connection with all other regulated land-disturbing activities, the plan-approving authority may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections after notice to the resident owner, occupier or operator as are deemed necessary to determine whether the soil erosion and sediment control measures required by the approved plan are being properly performed, and whether such measures are effective in controlling soil erosion and sediment resulting from the land-disturbing activity. Such resident owner, occupier or operator shall be given an opportunity to accompany the inspectors. If it is determined that there is failure to comply with the approved plan, the plan-approving authority shall serve notice upon the person who is responsible for carrying out the plan at the address specified by him in his certification at the time of obtaining his approved plan, or by delivery at the site of the permitted activities to the agent or employee of the permittee supervising such activities. Such notice shall set forth the measures needed for compliance and the time within which such measures shall be completed. Upon failure of such person to comply within the specified period, he will be deemed to be in violation of the article and upon conviction shall be subject to the penalties provided by the article.

(c) Additional provisions. - B. Notwithstanding the above provisions of this section the following may be applied:

(1) 1. Where a county, city, or town adopts administers the local control program and the permit-issuing authority and the plan-approving authority are not within the same local government department, the county, city, or town locality may designate one department to inspect, monitor, report and insure ensure compliance. In the event a district has been designated as the plan-approving authority for all or some of the conservation plans, the enforcement of the program shall be with the local government department; however, the district may inspect, monitor and make reports for the local government department.

(2) 2. Where a district adopts the local control program and permit-issuing authorities have been established by a county, city, or town locality , the district by joint resolution with the applicable county, city, or town appropriate locality may exercise the responsibilities of the permit-issuing authorities with respect to monitoring, reports, inspections and enforcement.

(3) 3. Where a permit-issuing authority has been established, and such authority is not vested in an employee or officer of local government but is in the commissioner of revenue or some other person, the county, city, or town locality shall exercise the responsibilities of the

permit-issuing authority with respect to monitoring, reports, inspections and enforcement unless such responsibilities are transferred as provided for in the above provisions of this section.

~~(d)~~ Adherence to approved plans and specifications. - C. Upon receipt of a sworn complaint of a substantial violation of either ~~§ 21-89.6 or § 21-89.8~~ this section, § 10.1-563 or § 10.1-564 from the designated enforcement officer, the chief administrative officer of (i) the Soil and Water Conservation Board, or (ii) the county, city or town operating its own erosion and sediment control program, or (iii) a district which is responsible for monitoring and inspecting for compliance may, in conjunction with or subsequent to a notice to comply as specified in subsections ~~(a) or (b)~~ subsection A above, issue an order requiring that all or part of the land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, such an order may be issued without regard to whether or not the permittee alleged violator has been issued a notice to comply as specified in subsections ~~(a) and (b)~~ subsection A above. Otherwise, such an order may be issued only after the permittee alleged violator has failed to comply with such a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for a period of seven days from the date of service pending application by the enforcing authority or permit holder alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Upon completion of corrective action, the order shall immediately be lifted. Nothing in this section shall prevent the chief administrative officer from taking any other action specified in ~~§ 21-89.11~~ § 10.1-569 .

Drafting Note: Subsections (a) and (b) of existing § 21-89.8 were combined into one subsection at the suggestion of DCHR. As revised, the section requires inspections whether or not a permit is issued. Currently inspection by the local government is required only if a permit is issued.

~~§ 21-89.9~~ 10.1-567 . Cooperation with federal and state agencies.—The districts ; counties, cities or towns localities operating their own programs, and the Commission Board are authorized to cooperate and enter into agreements with any federal or State state agency in connection with plans for erosion and sediment control with respect to land-disturbing activities.

Drafting Note: No change in the law.

~~§ 21-89.10~~ 10.1-568 . Appeals.— ~~(a)~~ A. Final decisions of counties, cities or towns under this article shall be subject to review by the court of record of the county or city, provided that an appeal is filed within thirty days from the date of any written decision adversely affecting the rights, duties or privileges of the person engaging in or proposing to engage in land-disturbing activities.

~~(b)~~ B. Final ~~decision~~ decisions of the districts shall be subject to an administrative review by the Commission Board , provided that an appeal is filed within thirty days from the date of the written decision.

~~(c)~~ C. Final decisions of the Commission Board either upon its own action or upon the review of the action of a district shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

Drafting Note: No change in the law.

~~§ 21-89.11~~ 10.1-569 . Penalties, injunctions and other legal actions.— ~~(a)~~ A violation under ~~§ 21-89.6 or § 21-89.8~~ of this article A. Violators of § 10.1-563, § 10.1-564 or § 10.1-566 shall be deemed guilty of a misdemeanor and upon conviction shall be subject to a fine not exceeding \$1,000 or ~~30~~ thirty days imprisonment for each violation or both.

~~(b)~~ B. The appropriate permit-issuing authority, or a district ; a county, city, or town or locality operating its own program, or the Commission Board may apply to the circuit court of record in the any jurisdiction wherein the land lies ; or to the Circuit Court of the City of Richmond should the lands lie in more than one jurisdiction, for injunctive relief to enjoin a violation or a threatened violation under ~~§ 21-89.6 or § 21-89.8~~ of this article, § 10.1-563, § 10.1-564 or § 10.1-566 without the necessity of showing that there does not exist an adequate remedy at law does not exist .

~~(c)~~ The Commonwealth's attorney shall, upon C. Upon request of a district ; county, city, or town or locality operating its own program, or the permit-issuing authority, the Commonwealth's attorney shall take legal action to enforce the provisions of this article. The State Attorney General shall, upon Upon request of the Commission, Board, the Attorney General shall take appropriate legal action on behalf of the Commission Board to enforce the provisions of this article.

(d) D. Compliance with the provisions of this article shall be prima facie evidence in any legal or equitable proceeding for damages caused by erosion ; ~~siltation~~ or sedimentation that all requirements of law have been met and the complaining party must show negligence in order to recover any damages.

Drafting Note: It was provided that an action for an injunction under subsection B can be brought in any jurisdiction wherein the land lies. Existing law provides that venue is in the Circuit Court of the City of Richmond if the land lies in more than one jurisdiction, this provision was eliminated.

§ ~~21-80-12~~ 10.1-570 . Authorization for more stringent ~~standards~~ *regulations* .—A district ; ~~county, city or town or locality~~ is ~~hereby~~ authorized to adopt more stringent soil erosion and ~~siltation standards~~ *sediment control regulations* than those necessary to ensure compliance with the State's ~~minimum standards, guidelines and eriteria~~ *Board's regulations* . However, ~~nothing~~ in this section shall *not* be construed to authorize any district ; ~~county, city or town or locality~~ to impose any more stringent regulations for plan approval or permit issuance than those specified in §§ ~~21-80-6 and 21-80-7~~ 10.1-564 and 10.1-565 .

Drafting Note: No change in the law.

§ ~~21-80-13~~ 10.1-571 . No limitation on authority of Water Control Board or Department of Conservation and Economic Development *Mines, Minerals and Energy* .— ~~Nothing contained within the~~ The provisions of this article shall *not* limit the powers or duties presently exercised by the State Water Control Board under Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of this Code, or the powers or duties of the Department of ~~Conservation and Economic Development~~ *Mines, Minerals and Energy* as it ~~relates~~ *relate* to strip mine reclamation under Chapters 16 (§ 45.1-180 et seq.) and 17 (§ 45.1-198 et seq.) of Title 45.1 ~~of this Code~~ *or oil or gas exploration under the Virginia Oil and Gas Act (§ 45.1-286 et seq.)* .

Drafting Note: The Department of Mines, Minerals and Energy was substituted for the Department of Conservation and Economic Development. The power and duty of the Department of Mines, Minerals and Energy to explore for oil or gas under the Oil and Gas Act was added.

§ ~~21-80-14~~. Not set out.

Drafting Note: The severability clause is being repealed because of the general severability clause in § 1-17.1.

§ ~~21-80-15~~. ~~Projects commenced before adoption of conservation standards not affected.—~~ Nothing in this article shall affect any project commenced prior to the adoption of the conservation standards by the districts, counties, cities or towns.

Drafting Note: The grandfather clause for projects commenced before the adoption of standards is repealed at the recommendation of DCHR. The standards have been in effect for fourteen years and the grandfather clause is believed to be unnecessary.

Article 5. Soil Survey.

§ ~~21-5-2~~ 10.1-572 . Duty of ~~Board~~ as *Department* to ~~completing~~ *complete* Virginia portion of National Cooperative Soil Survey.—In addition to the other duties and responsibilities ~~conferred by this chapter, the Virginia Soil and Water Conservation Board~~ *Department* shall have the duty and responsibility to take the administrative leadership in the program ~~be responsible~~ for accelerating the Virginia portion of the National Cooperative Soil Survey ; ~~and for coordinating efforts~~ to complete the inventory of Virginia's soil ~~resouree~~ *resources* by 1996 ; ~~and to make necessary coordination therefor~~ .

Drafting Note: Since the Soil and Water Conservation Board has been placed under the administration of DCHR, the Department has the primary responsibility for completing the soil survey.

§ ~~21-5-3~~ 10.1-573 . Immunity from prosecution for trespass.—No criminal action for trespass shall lie against the ~~Virginia Soil and Water Conservation Commission~~ *Board* , or any agent or employee of ~~such Commission~~ *the Department* , or against any agent or employee of the United States Department of Agriculture or ~~the~~ Virginia Polytechnic Institute and State University, because of the mere entry upon the lands of any person ~~or persons~~ for the purpose of performing ~~such~~ duties in conjunction with the conduct and completion of the Virginia portion of the National Cooperative Soil Survey, provided ~~such~~ *that the* agent or employee ~~has, prior to such entry,~~ made a reasonable effort to obtain the consent of the owner of ~~such~~ *the land prior to his entry* .

Drafting Note: No change in the law.

§ 21-00. ~~Board to be established.—Where the directors of any district organized under the provisions of this chapter shall adopt any ordinance prescribing land-use regulations in~~

accordance with the provisions of §§ 21-66 to 21-91, they shall further provide by ordinance for the establishment of a board of adjustment.

§ 21-91. Number of members and terms.—Such board of adjustment shall consist of three members, each to be appointed for a term of three years, except that the members first appointed shall be appointed for terms of one, two, and three years, respectively.

§ 21-92. Appointment by Commission; removal and vacancies.—The members of each such board of adjustment shall be appointed by the Virginia Soil and Water Conservation Commission, with the advice and approval of the directors of the district for which such board has been established, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the Commission and the directors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments, and shall be for the unexpired term of the member whose term becomes vacant.

§ 21-93. Members of Commission and directors ineligible.—Members of the Virginia Soil and Water Conservation Commission and the directors of the district shall be ineligible to appointment as members of the board of adjustment during their tenure of such other office.

§ 21-94. Compensation.—The members of the board of adjustment shall receive compensation for their services at the rate of three dollars per day for their time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in the discharge of their duties.

§ 21-95. Expenses of operation.—The directors shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

§ 21-96. Board shall adopt rules.—The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this chapter and with the provisions of any ordinance adopted pursuant to this article.

§ 21-97. Chairman.—The board shall designate a chairman from among its members, and may, from time to time, change such designation.

§ 21-98. Meetings and quorum.—Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two members of the board shall constitute a quorum. The chairman, or in his absence such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public.

§ 21-99. Records.—The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

§ 21-100. Petition to board for variance from use regulation.—Any land occupier may file a petition with the board of adjustment alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by any ordinance approved by the directors, and praying the board to authorize a variance from the terms of the land-use regulations to the lands occupied by the petitioner.

§ 21-101. Service of copy of petition on chairmen.—Copies of such petition shall be served by the petitioner upon the chairman of the directors of the district within which his lands are located and upon the chairman of the Virginia Soil and Water Conservation Commission.

§ 21-102. Notice of hearing.—The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given.

§ 21-103. Parties and appearance.—The directors of the district and the Virginia Soil and Water Conservation Commission shall have the right to appear and be heard at such hearing. Any occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent, or by attorney.

§ 21-104. Order authorizing variance.—If, upon the facts presented at such hearing, the board shall determine that there are great practical difficulties or unnecessary hardship in the way of

applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

§ 21-105. Judicial review.—Any petitioner aggrieved by an order of the board granting or denying in whole or in part, the relief sought, the directors of the district, or any intervening party, may file a petition for a review of such order in the circuit court of the county, or in a court having equity jurisdiction in the city, in which the land is located, praying that the order of the board be modified or set aside. A copy of such petition shall forthwith be served upon the parties to the hearing before the board and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determinations, and order of the board. Upon such filing, the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein, and shall have power to grant such temporary relief as it deems just and proper, and to hear such additional evidence as is material and to make and enter an order enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board.

The jurisdiction of the court shall be exclusive and its order shall be final, except that appeal shall lie from such order to the Court of Appeals in the manner provided by law.

Drafting Note: Article 7 of Chapter 1 of Title 21 (§ 21-90 through 21-105), entitled "Board of Adjustment" is being repealed. The Board has never been established and it is not anticipated that there will be a need for the Board in the future. The legislation creating the Board was enacted in 1938 and was based on a National Model bill.

CHAPTER 6.

FLOOD PROTECTION AND DAM SAFETY.

Article 1.

Flood Damage Reduction Act.

~~62.1-44.108.~~ Title.—This chapter shall be known and may be cited as the Flood Damage Reduction Act.

Drafting Note: This section is being repealed because it is not necessary.

§ ~~62.1-44.110~~ 10.1-600 . Definitions.—As used in this chapter *article* , unless the context requires otherwise a *different meaning* :

A. "Department" means the Department of Conservation and Historic Resources.

B. "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.

C. "Flood hazard area" means a general term applied to all *those* areas susceptible to flooding.

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

E. "Flood plain management regulations" means zoning ordinances, subdivision regulations, building code, health regulations, special purpose ordinances such as flood plain ordinances, grading ordinances or erosion control ordinances, and other ~~duly promulgated~~ 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.

F. "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.

G. ~~“Local political subdivision”~~ *“Locality”* means a county, city, or town.

H. *“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.

I. *“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 ~~hazard boundary~~ *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.

Drafting Note: The definition of Department was deleted because it is defined in the general provisions of the subtitle.

~~§ 62-144.111 10.1-601 . Administration and enforcement of chapter.~~The Department shall have the authority to administer the provisions of this chapter in coordination with the administration of the Virginia Erosion and Sediment Control Law ; ~~Article 6-1~~ (§ ~~21-89.1 10.1-560~~ et seq.) of ~~Chapter 1~~ of Title 21 . The Department shall coordinate and cooperate with ~~local political subdivisions~~ *localities* in rendering assistance to such ~~political subdivisions~~ *localities* in their efforts to comply with the provisions of Planning, Subdivision of Land and Zoning, Chapter 11 (§ 15.1-427 et seq.) of Title 15.1. The Department shall cooperate with other public and private agencies having flood plain management programs, and shall coordinate its responsibilities under this ~~chapter article~~ and any other law. The Department shall coordinate the development, dissemination and use of information on floods and flood hazards.

Drafting Note: No change in the law.

~~§ 62-144.112 10.1-602 . Powers and duties of Department of Conservation and Historic Resources .- It shall be the duty of the The Department and it shall have the authority :~~

~~A. To collect~~ 1. *Collect* and distribute information relating to flooding and flood plain management.

~~B. To coordinate~~ 2. *Coordinate* local, state and federal flood plain management activities to the greatest extent practicable, and ~~to encourage~~ the United States Army Corps of Engineers, the United States Soil Conservation Service, the United States Geological Survey, the Tennessee Valley Authority, and the United States ~~Department of Housing and Urban Development~~ *Federal Emergency Management Agency* to make available flood and flood damage reduction data to ~~local political subdivisions~~ *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 the ~~policy and purpose~~ of this ~~chapter article~~ .

~~C. To assist local political subdivisions~~ 3. *Assist localities* in their management of flood plain activities in cooperation with the Department of Housing and Community Development.

~~D. To carry~~ 4. *Carry out* the provisions of this ~~chapter article~~ in a manner which will ~~insure~~ *ensure* that the management of flood plains will preserve the capacity of the flood plain to carry and discharge a hundred year flood.

~~E. To make~~ 5. *Make* , in cooperation with ~~local political subdivisions~~ *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.

~~F. To coordinate~~ 6. *Coordinate* with the United States ~~Department of Housing and Urban Development~~ *Federal Emergency Management Agency* to ~~insure~~ *ensure* current knowledge of the identification of flood-prone communities and of the status of applications made by ~~local governments~~ *localities* to participate in the National Flood Insurance Program.

~~G. To establish~~ 7. *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.

Drafting Note: Federal Emergency Management Agency substituted for HUD.

~~§ 62-144.109 10.1-603 . Policy and purpose State agency compliance .- It is the policy of the~~

Commonwealth and the purpose of this chapter to reduce flood damage through management of floodplain use by such means as floodplain zoning, and to insure that land uses in flood hazard or floodplain areas are appropriate. The responsibility and authority for zoning in the Commonwealth, including the adoption of floodplain zoning, rests with the local governing bodies as provided in Chapter 11 (§ 15.1-427 et seq.) of Title 15.1 of the Code of Virginia. It is the intent and purpose of this chapter to guide development of the floodplains of the Commonwealth by providing state coordination and assistance to local political subdivisions in floodplain management; to encourage local governmental units to adopt, enforce and administer sound floodplain management ordinances; and to provide the authority necessary to carry out a floodplain management program for the Commonwealth and to coordinate federal, state and local floodplain management activities in this Commonwealth in such a manner that will enable all local governmental units subject to recurrent flooding to qualify for participation in the National Flood Insurance Program.

Further, it is the policy of the Commonwealth that all All agencies and departments of the Commonwealth shall comply, when and wherever possible, with the floodplain flood plain regulations established pursuant to this chapter article when planning for facilities in floodplains flood plains .

Drafting Note: The main provisions of this section are stricken because they state legislative policy and purpose. Many of the provisions are currently stated as duties of the Department in proposed § 10.1-602. The last sentence of the section was retained.

Article 2.

Dam Safety Act.

§ ~~62.1-115.1~~ 10.1-604 . Definitions.—As used in this chapter the following words shall have the meanings respectively ascribed thereto article, unless the context requires a different meaning :

1. "Board" means the Soil and Water Conservation Board.
 2. "Director" means the Director of the Department of Conservation and Historic Resources.
 3. "Impounding structure" means a man-made device, 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 "impounding structure" shall not include: (i) dams licensed by the State Corporation Commission that are subject to a safety inspection program; (ii) dams owned or licensed by the United States government; (iii) dams constructed, maintained or operated primarily for agricultural purposes which are less than twenty-five feet in height or which create a maximum impoundment smaller than 100 acre-feet; (iv) water or silt retaining dams approved pursuant to § 45.1-222 of the Code of Virginia; (v) obstructions in a canal used to raise or lower water; (vi) nonagricultural dams which are less than twenty-five feet in height or which create a maximum impoundment smaller than fifty acre-feet; or (vii) dams not more than six feet in height regardless of storage capacity or with a storage capacity of not more than fifteen acre-feet regardless of height.
 4. "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.
 5. "Watercourse" means a natural channel having a well-defined bed and banks and in which water flows when it normally does flow.
- "Impounding structure" means a man-made device, 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 "impounding structure" shall not include: (i) dams licensed by the State Corporation Commission that are subject to a safety inspection program; (ii) dams owned or licensed by the United States government; (iii) dams constructed, maintained or operated primarily for agricultural purposes which are less than twenty-five feet in height or which create a maximum impoundment smaller than 100 acre-feet; (iv) water or silt retaining dams approved pursuant to § 45.1-222; (v) obstructions in a canal used to raise or lower water; (vi) nonagricultural dams which are less than twenty-five feet in height or which create a maximum impoundment smaller than fifty acre-feet; or (vii) dams not more than six feet in height regardless of storage capacity or with a storage capacity of not more than fifteen acre-feet regardless of height.*
6. "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.

Drafting Note: The definition of director was stricken because it is defined in the general provisions of the subtitle. The definitions were arranged in alphabetical order.

§ 62.1-115.2 10.1-605 . Promulgation of rules and regulations by the Board.—The Board shall promulgate all necessary rules and 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.

Drafting Note: No change in the law.

§ 62.1-115.3 10.1-606 . Local advisory committee.— The Board shall also provide for the creation of a local advisory committee to advise the Board upon impoundments within such local jurisdiction, when the Board is requested to create such an advisory committee by the governing body of any affected county or city. Such an *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 from of the owner and each affected county or city. Prior to the issuance of any permits under the provisions of this chapter 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.

Drafting Note: The first sentence was rewritten for clarity.

§ 62.1-115.4 10.1-607 . Safety inspections.—No one shall have a right to maintain a dam which unreasonably threatens the life or property of another. The Board shall cause safety inspections, not to exceed that of a phase I inspection report as established by the U.S. Army Corps of Engineers, to be made of impounding structures on such schedule as it deems appropriate ; the . *The time of the initial inspection and the frequency of reinspection depending 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 uncorrected not corrected shall take the corrective actions, which may include a phase II inspection report as established by the U.S. Army Corps of Engineers, 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 of each inspection shall bear the seal and signature of the licensed professional engineer responsible for the inspection.*

The Virginia Soil and Water Conservation 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.

Drafting Note: No change in the law.

§ 62.1-115.5 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 Services 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 of 1973, Chapter 3-2 (§ 44-146.13 et seq.) of Title 44 of the Code .

Drafting Note: No change in the law.

§ 62.1-115.6 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 § 62.1-115.4 of this Code 10.1-607 , the Board’s staff Board shall issue a report to the owner of the impounding structure containing its findings and recommendations for correction of any

deficiencies ; if any, which could threaten life or property if ~~uncorrected~~ *not corrected* . Owners who have been issued a staff report containing recommendations for correction of deficiencies shall undertake to implement the recommendations contained in the staff report according to the schedule of implementation contained in the report. If an owner fails or refuses to commence or diligently ~~prosecute the implementation of~~ *implement the* recommendations for correction of deficiencies according to the schedule of ~~implementation~~ contained in an issued staff 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 staff 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. 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 § 9-6.14:11 of this Code . The Board shall have the authority to affirm, modify, amend or cancel ~~such~~ *the* administrative order. Any owner aggrieved by a decision of the Board after a hearing ~~herein provided~~ shall have the right to judicial review of ~~such~~ *the* final Board decision pursuant to the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

B. The provisions of subsection A of this section notwithstanding, if ~~in the opinion of the Director determines~~ , *after the report is issued, that* changed circumstances justify reclassifying the deficiencies of an impounding structure ~~after issuance of the staff report~~ as an imminent danger to life or property, the Director may proceed directly under § ~~62.1-115.10~~ *10.1-613* of this Code for enforcement of his order, and the owner shall have the opportunity to contest the fact basis upon which the administrative order was issued.

Drafting Note: No change in the law.

§ ~~62.1-115.7~~ *10.1-610* . Right ~~to~~ *of* entry.—The Board and its agents and employees shall have the right to enter any property ~~upon consent of the owner or custodian~~ to perform such inspections and tests or to take ~~such~~ other actions as it deems necessary to fulfill its responsibilities under this ~~chapter article~~ . If entry is denied, the Board may apply to 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.

Drafting Note: The right of entry provisions were changed to allow the Board to enter any property when necessary to fulfill its responsibilities.

§ ~~62.1-115.8~~ *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 which are not regulated under this ~~chapter 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 ~~by whomsoever made~~ 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 Services. The Board shall provide technical assistance in the preparation, updating and execution of such 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.

Drafting Note: No change in the law.

§ ~~62.1-115.9~~ *10.1-612* . Technical Advisory Committee.—The Board shall establish an ~~impoundment~~ *Impoundment* Safety Technical Advisory Committee to provide technical review. ~~Such committee~~ *The Committee* may make recommendations to the Board.

Drafting Note: No change in the law.

§ ~~62.1-115.10~~ *10.1-613* . Enforcement.—Any person or legal entity failing or refusing to comply with an order issued pursuant to this ~~chapter article~~ may be compelled *to comply with the order* in a proceeding instituted in any appropriate court by the Board ~~to obey the same, and the court shall require the owner to comply therewith~~ .

Drafting Note: No change in the law.

Article 3.

Watershed Improvements Districts.

~~§ 21-112.1 10.1-614~~ . Establishment within soil and water conservation district authorized.— Whenever ~~within a soil and water conservation district or districts~~ 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.

Drafting Note: No change in the law.

~~§ 21-112.2 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 ~~their number be less 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)~~ 1. The proposed name of the watershed improvement district;
- ~~(2)~~ 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)~~ 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)~~ 4. That the territory described in the petition is contiguous and is the same watershed, or is two or more contiguous watersheds;
- ~~(5)~~ 5. A request that the territory described in the petition be organized as a watershed improvement district;
- ~~(6)~~ 6. The method for financing the proposed district, whether it be 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.

Drafting Note: No change in the law.

~~§ 21-112.3 10.1-616~~ . Notice and hearing on petition; determination of need for district and defining boundaries ; ~~§§ 21-12.1 through 21-32 applicable~~ .—Within thirty days after ~~such 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 ~~shall~~ 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 ~~such~~ *their* determination and ~~shall~~ define the boundaries of ~~such~~ *the* watershed improvement district. The provisions of Article 3 (~~§ 21-12.1 et seq.~~) 2 (*§ 10.1-502 et seq.*) of ~~this chapter~~ *Chapter 5 of this title* shall apply, mutatis mutandis, to such proceedings.

Drafting Note: No change in the law.

~~§ 21-112.4 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 ~~question of whether the operation of administrative feasibility of operating~~ the proposed watershed improvement district is ~~administratively practicable and feasible~~ . 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 ~~such~~ *the* referendum shall be given by the *district* directors ; and ~~ballots therefor shall be in substantially the form set forth in § 21-112.4.1~~ . All owners of land lying within the boundaries of the proposed watershed improvement district shall be eligible to vote in ~~such~~ *the* referendum. The *district* directors may prescribe ~~such~~ *rules and necessary* regulations governing the conduct

of such the hearing and referendum as they deem to be necessary .

Drafting Note: "District" inserted before "director" for clarification.

§ 21-112.4:1 10.1-618 . Ballots used in such referendum.—The question shall be submitted by ballots upon which the words "For creation of a watershed improvement district of the lands below described and lying in the county(ies) or city(ies) of and" and "Against creation of a watershed improvement district of the lands below described and lying in the county(ies) or city(ies) of and" shall be printed, with a square before each proposition and a direction to insert a check mark (A) or cross mark (X or +) before one or the other of the propositions as the voter may favor or oppose creation of such district. , 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 such the proposed district as determined by the Commission Board .

The ballot shall also set forth the method or methods of real estate assessment as determined by the district directors.

Drafting Note: The description of the ballot has been changed to conform with other referendums in the Code. The last sentence is taken from existing § 21-112.5, so that all descriptions of the ballot will be in one section.

§ 21-112.5 10.1-619 . Consideration of results of referendum; two-thirds favorable vote required.—The results of such 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 ; ~~provided, that the .~~ *The district* directors shall not be authorized to determine that operation of the proposed watershed improvement district is administratively practicable and feasible unless at least two-thirds of the votes cast in the referendum, which two-thirds vote shall also represent ownership of at least two-thirds of the land in the proposed district, shall have been cast in favor of the creation of such the watershed improvement district. ~~Furthermore, the ballot shall set forth the method of real estate assessment or combination of methods as determined by the directors.~~

Drafting Note: The last sentence is moved to existing § 21-112.4:1 (proposed § 10.1-618).

§ 21-112.6 10.1-620 . Declaration of organization of district; certification to Commission Board .—If the *district* directors shall determine that operation of the proposed watershed improvement district is administratively practicable and feasible, they shall declare the watershed improvement district to be ~~duly~~ organized and shall record such 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 Commission Board , and shall furnish a copy of such 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 ; ~~and the .~~ *The* watershed improvement district shall thereupon constitute a ~~governmental~~ *political* subdivision of this State, ~~and a public body corporate and politic Commonwealth .~~

Drafting Note: No change in the law.

§ 21-112.7 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 such the proposed watershed improvement district is situated, and the directors of all such affected soil and water conservation districts affected shall act jointly as a board of directors with respect to all matters concerning such the watershed improvement district, including its organization. ~~Such~~ *The* watershed improvement district shall be organized in ~~like~~ *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.

Drafting Note: No change in the law.

§ 21-112.8 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 ~~with respect to~~ *for* petitions to organize the

watershed improvement district shall be observed to the extent deemed practicable by ~~such~~ *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 ; ~~and no~~ . 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.

Drafting Note: No change in the law.

~~§ 21-112-9~~ 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 ~~Commission Board~~ , three trustees, who shall be the owners of land within the watershed improvement district. The trustees ~~so appointed~~ shall exercise ~~such~~ *the* administrative duties and powers as may be 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 ~~Commission Board~~ . The trustees shall designate a chairman and may ; ~~from time to time~~, change such designation. One of the trustees may be selected as treasurer and shall ~~then~~ be responsible for the safekeeping of ~~all~~ 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.

Drafting Note: No change in the law.

~~§ 21-112-10~~ 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 may 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 ~~provide for the making and publication of~~ *publish* an annual audit of the accounts of receipts and disbursements of the watershed improvement district.

Drafting Note: No change in the law.

~~§ 21-112-11~~ 10.1-625 . Status and general powers of district; power to levy tax or service charge; approval of landowners required.—A watershed improvement district ~~organized under the provisions of this article shall constitute a governmental subdivision of this State, and a public body corporate and politic, exercising public powers, and such 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 thereto 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 under § 24.1-165 approve the levy of a tax to be expended for the purposes of the watershed improvement district.~~

Drafting Note: Proposed § 10.1-620 (existing § 21-112.6) provides that a watershed improvement district is a political subdivision; therefore, that provision was stricken here.

~~§ 21-112-12-1~~ 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 ~~one~~ 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 ~~Commission 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 ~~subsections~~ *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 ~~such~~ *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 ~~such~~ *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 ; ~~provided, however, that~~ . 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 ; ~~provided, however, that~~ . 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 ~~chapter~~ *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, ~~such person, firm, or corporation~~ he may ~~then~~ 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 2 5 (§ ~~58-1141~~ 58.1-3980 et seq.) of Chapter 22 39 of Title 58 58.1 of the Code of Virginia .

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.

Drafting Note: References to Title 58.1 updated.

§ ~~21-112.13~~ 10.1-627 . Collection of tax or service charge; proceeds kept in special account; expenditures from such account.—The special tax or service charge so 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.

Drafting Note: No change in the law.

§ ~~21-112.14~~ 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 or courts of such the county or city ; or the judge or judges thereof in vacation, wherein said 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 said the watershed improvement district, shall make an order requiring the judges of election a referendum at the next election regularly prescribed by law, or at any other time not less than thirty days from the date of such order, which shall be designated therein, to open a poll and take the sense of the landowners of the district on the question determine whether the said governing body shall incur indebtedness or issue bonds for one or more of the purposes for which the watershed improvement district was created.

§ 21-112.15. ~~Conduct of such poll.~~ The election referendum shall be conducted in the manner prescribed by this article for the conduct of other referendums in the watershed improvement districts, and under § 24.1-165.

Drafting Note: Language regarding the referendum was revised. Existing §§ 21-112.4 and 21-112.15 were combined into one section.

§ 21-112.16 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 said the district vote in the said election, and if at least two-thirds of the voters in said the election vote in favor of incurring the indebtedness or issuing bonds, the circuit court or courts ; or judge or judges thereof in vacation, shall enter of record an order authorizing the governing body of said the watershed improvement district to incur indebtedness or issue bonds for one or more of the purposes for which the district was created.

Drafting Note: No change in the law.

§ 21-112.17 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 Commission Board and the Commission on Local Debt State Council on Local Debt .

Drafting Note: No change in the law. The Commission on Local Debt has been continued as the State Council on Local Debt (§ 15.1-173).

§ 21-112.18 10.1-631 . Annual tax for payment of interest or to amortize indebtedness or bonds.—The governing body of said the watershed improvement district shall, if necessary for the payment of to pay the interest on the indebtedness or bonds ; or to amortize such indebtedness or bonds in such a manner as may be approved by the Commission State Council on Local Debt, levy an annual tax or service charge in the manner prescribed by § 21-112.12:1 10.1-626 on all the real estate in the said watershed improvement district subject to local taxation, to pay satisfy such interest and to amortize such indebtedness or bonds which obligations. This tax , irrespective of any approvals required pursuant to § 21-112.12:1 10.1-614 , shall be sufficient to pay interest and to amortize such indebtedness or bonds at the times required.

Drafting Note: No change in the law.

§ 21-112.19 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 its their powers within the watershed improvement district.

Drafting Note: No change in the law.

§ 21-112.20 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, in the manner hereinabove as set forth in this article , to incur debts and repay the same them over such the period of time and at such the rate or rates of interest, not exceeding eight per centum percent , as that the lender or lenders agree agrees to. Any such 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 exercises or may possess.

Drafting Note: No change in the law.

§ 21-112.20:1 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.

Drafting Note: No change in the law.

~~§ 21-112.21~~ *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 and empowered to acquire by the exercise of the power of 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 ~~chapters~~ *Chapters* 1.1 (§ 25-46.1 et seq.) and 5 (§ 25-232 et seq.) of Title 25 of the Code of Virginia.

Drafting Note: No change in the law.

Article 4.

Conservation, Small Watersheds Flood Control and Area

Development Fund.

~~§ 21-11.2~~ *10.1-636* . Definitions.—As used in this article, the following words and terms shall have the following meanings unless the context requires a different meaning :

“Board” means the Virginia Soil and Water Conservation Board.

~~(1)~~ The word *“facility”* *“Facility”* means any structures, foundations, appurtenances, spillways, lands, easements and rights-of-way necessary ~~(a)~~ to (i) store additional water for immediate or future use in feasible flood prevention sites; ~~or (b)~~ to (ii) create the potential to store additional water by strengthening the foundations and appurtenances of structures in feasible flood prevention sites; or ~~(c)~~ to (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.

~~(2)~~ The phrase *“storing”* *“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.

Drafting Note: Definition of “Board” and “Fund” added.

~~§ 21-11.1~~ *10.1-637* . Fund established continued; administrative control .— The revolving fund created by § 21-11, now repealed, shall remain as a revolving fund designated as the *The “Conservation, Small Watersheds Flood Control and Area Development Fund,”* sometimes referred to hereafter as the *“revolving fund”* or the *“fund,”* to is continued and shall be administered and used as hereinafter provided. In addition, the *The* revolving fund shall also consist of such any moneys as may be hereafter appropriated by the General Assembly.

Drafting Note: Definition of fund was moved to the definitional section. References to the establishment of the Fund were removed.

~~§ 21-11.4.~~ *Administrative control.*— 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 Commission. The Commission is hereby *Board*. The Board is authorized to adopt and promulgate such rules and regulations that are deemed necessary by it *establish guidelines* for the proper administration of the fund and the provisions of this article.

Drafting Note: Existing §§ 21-11.1 and 21-11.4 were combined into one section.

~~§ 21-11.3~~ *10.1-638* . Purposes for which fund to be used.— The Commission, in its discretion, may use the revolving fund created by § 21-11.1 for the following purposes, subject to the limitations imposed by this, and following sections:

~~(1)~~ The Commission *A. The Board* is hereby authorized and empowered , with the concurrence of the State ~~Budget Director~~ *Treasurer* , to order the State Comptroller to make

loans from the revolving fund provided by § 21-11.1 to any county, town, 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 so 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 the sum of \$500,000 without the written approval of the Governor.

~~(2)~~ B. To promote the economic growth of the Commonwealth, the ~~Commission 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.

~~(3)~~ ~~The Commission~~ 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 paragraph ~~(2)~~ subsection B above. In addition, the ~~Commission 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 paragraph ~~(1)~~ subsection A above. The ~~Commission Board~~ shall not provide funds for emergency repairs to facilities constituting security for loans unless it appears to the ~~Commission Board~~ that funds for repairs are not available from other sources.

~~(4)~~ ~~The Commission~~ 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 ~~Commission Board~~. The ~~Commission 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 such terms as the ~~Commission Board~~ prescribes; provided that in . In addition to such other terms as the ~~Commission Board~~ may from time to time prescribe, it shall have authority to execute rental-purchase contracts with individual districts with respect to 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 ~~Commission~~; and provided further, that it Board. The Board may, in its discretion, sell the same to any person upon such terms and conditions as it may deem proper. The proceeds derived from the sale or rental of machinery or rental thereof, provided for in this section and in § 21-65 § 10.1-552, shall be paid into the revolving fund.

~~(5)~~ ~~The Commission~~ E. The Board is authorized to make loans from the revolving fund provided by § 21-11.1 of this Code 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 ~~Commission Board~~, and payments of interest and principal shall be made to the State Treasurer and credited to the revolving fund.

Drafting Note: No change in the law.

§ 21-11.5 10.1-639 . Conditions for making loan.--The ~~Commission Board~~ shall authorize the making of a loan under the provisions of § 21-11.3 ~~(1)~~ 10.1-638 A only when the following conditions exist:

~~(1)~~ 1. An application for the loan has been submitted by the borrower in such the manner and form as the ~~Commission~~ may direct 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 as may be required by the ~~Commission Board~~. This 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 such the application is approved by the said district or districts, the application shall be forwarded to the ~~Commission Board~~.

~~(2)~~ 2. The borrower agrees and furnishes assurance, satisfactory to the ~~Commission Board~~, that it will satisfactorily maintain any structure financed in whole or in part through the loans provided by this article in a satisfactory manner.

~~(3)~~ 3. The purpose for which the loan is sought is to acquire land, easements and rights-of-way, and/or engineering and/or legal services necessary for a water storage facility or project, and/or to construct the water storage facility itself.

(4) 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 ~~Commission Board~~ that the borrower requesting the loan will in fact acquire the land, easements or rights-of-way if the loan is granted.

Drafting Note: No change in the law.

~~§ 21-11.1 10.1-640~~ . Political subdivisions may borrow from other sources.—Any entity eligible under ~~§ 21-11.3 (1) 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.

Drafting Note: No change in the law.

~~§ 21-11.13 10.1-641~~ . Powers of ~~Commission Board~~ in aid of the provisions of ~~§ 21-11.3 10.1-638~~ .—The ~~Commission Board~~ shall have the following powers to effectuate the provisions of ~~§ 21-11.3 (2) 10.1-638 B~~ :

(1) 1. To expend funds from the revolving fund for field surveys and investigations, notwithstanding the possibility that the ~~Commission Board~~ may subsequently determine that the proposed investment is not feasible.

(2) 2. To make and execute contracts and other instruments necessary or convenient to the construction, improvement, operation and maintenance of facilities.

(3) 3. To make agreements with and act as agent for the United States, or any of its agencies, or for this *State 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 ~~Commission 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 *State 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) 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.

Drafting Note: No change in the law.

~~§ 21-11.8 10.1-642~~ . Record of applications for loans and action taken.—A record of each application for a loan pursuant to ~~§ 21-11.5 10.1-639~~ received by the ~~Commission Board~~ and the action taken thereon shall be open to public inspection at the office of the ~~Commission Board~~ and shall be presented to the Governor and members of the legislature prior to the budgetary sessions of the General Assembly.

Drafting Note: No change in the law.

~~§ 21-11.6 10.1-643~~ . Period of loan; interest rate; loan shall constitute a lien.—Any loan made pursuant to the provisions of ~~§ 21-11.3 (1) 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 ~~per annum~~ *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 ~~Commission 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 *State 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 ~~said six months' -month~~ period ; ~~or if~~ . If no such bonds have been sold within the ~~six months' -month~~ period, ~~such~~ the interest rate shall be set so as to conform as nearly as possible with the rate charged by the commercial money market for such or similar purposes ; ~~except that~~ . 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 ~~shall cost the borrower in excess of one hundred thousand dollars 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 ~~per annum~~ *annually* . Any borrower receiving a loan under the provisions of this article

shall agree to repay ~~such~~ 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.

Drafting Note: No change in the law.

~~§ 21-11.7 10.1-644 . Recovery of money due to fund.— In the event of the default of any If a borrower defaults on any payment due the State Treasurer pursuant to § 21-11.6 10.1-643 ; or in the event that any borrower defaults on any other obligation incurred pursuant to the provisions of this article, such the amounts owed to said the fund by said the borrower may be recovered by the State Comptroller transferring to the revolving fund the amount of the payment due to the said revolving fund from the distribution of state funds to which such 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 Commission 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 Commission Board .~~

Drafting Note: No change in the law.

~~§ 21-11.9 10.1-645 . Limits on expenditures authorized under § 21-11.3 (2) 10.1-638 B ; sale of resulting facilities; sale of stored water; renting facilities.—Expenditures by the Commission Board for any one facility under the provisions of § 21-11.3 (2) 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 Commission Board is authorized to sell any facility resulting from an expenditure authorized by § 21-11.3 (2) 10.1-638 B to any entity to whom a loan could be made pursuant to the provisions of § 21-11.3 (1) 10.1-638 A under the terms and conditions prescribed hereinafter. Conveyances of any such facilities shall be executed by the chairman of the Commission Board acting pursuant to a resolution of the Commission 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 Commission Board may contract with an entity eligible to borrow from the revolving fund pursuant to § 21-11.3 (1) 10.1-638 A , for the sale of water stored at facilities constructed by expenditures pursuant to § 21-11.3 (2) 10.1-638 B . However, it is not the intent of this article to provide a means whereby the State 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 Commission Board in the water storage facility by a future date agreeable to the Commission Board and entity. The Commission 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.~~

Drafting Note: No change in the law.

~~§ 21-11.10 10.1-646 . Purchase price and terms of sales authorized by § 21-11.9 10.1-645 .— When an entity, as the term is used in § 21-11.9 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 Commission Board has invested pursuant to § 21-11.3 (2) 10.1-638 B , the purchase price shall be the total expenditure from the revolving fund by the Commission Board for such facility plus a surcharge of three percent per annum annually on all funds expended for the facility, other than funds expended pursuant to § 21-11.3 (3) 10.1-638 C , from the date of expenditure to the date of purchase by the purchasing entity.~~

With the approval of the Commission Board , the purchasing entity may finance the purchase price, or any portion thereof, of the facility under the terms and conditions of §§ 21-11.3 (1) 10.1-638 A and 21-11.6 10.1-643 , and the provisions of §§ 21-11.6 10.1-643 and 21-11.7 10.1-644 shall apply, mutatis mutandis, to such financing. In the event that 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 § 21-11.3 (1) 10.1-638 A to the limit imposed by that

section to complete any facility purchased to store additional water.

Drafting Note: No change in the law.

~~§ 21-11-12~~ 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 ; ~~provided, however, that~~ . 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 ~~Commission 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.

Drafting Note: No change in the law.

~~§ 21-11-14~~ 10.1-648 . Acquisition of lands, easements, and rights-of-way.— A. The ~~Commission Board~~ , in addition to the provisions of ~~§ 21-11-3~~ 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)~~ 1. The program of work for the project has been found by the ~~Commission Board~~ to be feasible, practicable and will promote the health, safety, and general welfare of the people of the *State Commonwealth* ;

~~(2)~~ 2. The soil and water conservation district and/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 ~~Commission 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 ~~Commission Board~~ may require any other information which it deems necessary. The district and its cosponsors ; ~~if any~~, shall certify to the ~~Commission 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)~~ 4. The funds to be used for lands, easements, and rights-of-way shall be granted to the district or ~~to the~~ cosponsor ; ~~if any~~, 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 ~~owner or~~ 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 ; ~~if any~~, to ~~such~~ the former ~~owner or~~ 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, ~~if any~~, to sell the property purchased wholly or partially from the funds provided by this section. The ~~Commission Board~~ shall specify the terms for any such sale. Upon the sale or reconveyance of such property, the district or cosponsor ; ~~if any~~, shall remit to the ~~Commission 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 ; ~~if any~~, of the project in whose name the acquisition of the land or rights-of-way to be sold is recorded shall retain ~~an~~ any easement or right-of-way ; ~~if necessary~~, 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 ; ~~if any~~, of a project, with the approval of the ~~Commission 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, agency of the state or federal government, or a regional park authority.

When the conditions numbered ~~(1)~~ through ~~(4)~~ above have been met, as well as any other applicable rules and regulations as may be adopted by the ~~Commission~~ for the proper

administration of this section, the Commission may authorize the district or districts involved in the project to acquire the remaining lands, easements, or rights-of-way, in whole or in part, by condemnation. Such proceedings shall be instituted in the name of the district, which shall exercise the power of eminent domain granted the Commission under § 21-11.13 (5), which shall apply together with § 21-11.14, to such proceedings, mutatis mutandis. The Commission may reimburse the districts from the revolving fund for legal and witness fees expended in condemnation proceedings.

Drafting Note: The last paragraph of this section was stricken because it is meaningless because the Board was never granted the power of eminent domain. There has never been a subdivision (5) of § 21-11.13.

~~§ 21-11.15 10.1-649 . Sale to Commission Board of property and rights-of-way acquired by condemnation.—For the purpose of § 21-11.3 (2) 10.1-638 B the Commission Board is authorized to purchase property and rights-of-way condemned for watershed and water storage purposes under §§ 25-232, 15.1-238.1, 21-118 and 15.1-1250 and the condemnor is authorized to sell any such property or rights-of-way to the Commission Board .~~

Drafting Note: No change in the law.

Article 5.

Stream Restoration Assistance Program.

~~§ 21-11.23 10.1-650 . Definitions.—As used in this article, unless the context clearly indicates otherwise 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.

1. ~~“Natural streams” shall mean~~ 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.

2. ~~“Continual accelerated erosion” shall mean a rapid increase in erosion rate of stream banks caused by loss of vegetation, diversion of water by constrictions, undermining, and other resultant effects of severe floods.~~

“Program” means the Stream Restoration Assistance Program.

3. ~~“Stream restoration” shall mean~~ 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.

Drafting Note: Definitions were placed in alphabetical order. A definition of “Program” was added.

~~§ 21-11.21. Findings of the General Assembly.—The General Assembly finds that occasional flooding of natural streams within the Commonwealth sometimes causes severe erosion of stream banks, changes in stream course, and deposition of significant quantities of sediment and debris in stream channels; that segments of natural streams which are severely damaged during such flooding events are often left with unstable banks and channel constrictions that increase the susceptibility of those stream segments to continual accelerated erosion; and that such continual accelerated erosion of damaged stream banks causes destruction of adjacent public and private lands and results in sediment deposition which despoils the affected waters and waterways of the State to such a degree that fish, aquatic life, and recreation and other uses are adversely affected.~~

Drafting Note: This section is stricken because it states legislative findings.

~~§ 21-11.22 10.1-651 . Establishment and administration of Program.— The natural streams of the Commonwealth are great resources to be protected. It is, therefore, the policy of the State to establish a The Stream Restoration Assistance Program to 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. Such program The Program shall be administered by the Virginia Soil and Water Conservation Commission Board in cooperation with soil and water conservation districts and local governments throughout the Commonwealth. To assist in the development of such program, the~~

~~Commission~~ *the Program*, the Board shall seek the advisory opinion of the State Water Control Board and the ~~Commission~~ Department of Game and Inland Fisheries.

Drafting Note: References to policy were stricken.

§ ~~21-11.24~~ 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 ~~this program~~ *the Program* .

Drafting Note: No change in the law.

§ ~~21-11.25~~ 10.1-653 . Application for assistance.—Landowners who wish to receive assistance under ~~this program~~ *the Program* shall apply to the Virginia Soil and Water Conservation ~~Commission~~ Board . The ~~Commission~~ 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.

Drafting Note: No change in the law. Commission changed to Board.

§ ~~21-11.26~~ 10.1-654 . Damage inspections and reports.—A. Upon receipt of an application for assistance, the ~~Commission~~ 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 ~~Commission~~ 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.

Drafting Note: No change in the law.

§ ~~21-11.28~~ 10.1-655 . Types of assistance.—Upon approval of an application for assistance, the ~~Commission~~ Board may provide technical and financial assistance to the applicant according to the following guidelines:

1. The ~~Commission~~ Board shall maintain a technical staff ~~capability~~ 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 ~~Commission~~ Board . In no case shall such assistance exceed fifty percent of the total cost of construction. Funds shall not be disbursed until the ~~Commission~~ 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 ~~this program~~ *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 ~~Commission~~ Board shall set priorities and allocate funds as it deems appropriate to accomplish the maximum benefit.

Drafting Note: No change in the law.

§ ~~21-11.27~~ 10.1-656 . Board action on assistance requests.—The ~~Commission~~ 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 ~~Commission~~ 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 ~~Commission~~ 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.

Drafting Note: No change in the law.

§ ~~21-11-29~~ 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 ~~Commission~~ Board may seek money from federal and private sources to establish and maintain the Stream Restoration Fund.

Drafting Note: No change in the law.

CHAPTER 7.

SHORELINE EROSION AND PUBLIC BEACH PRESERVATION.

Article 1.

Shore Erosion Control.

§ ~~21-11-16~~ Declaration of policy.—The shores of the Commonwealth of Virginia are a most valuable resource that should be protected from erosion which reduces the tax base, decreases recreational opportunities, decreases the amount of open space and agricultural lands, damages or destroys roads and produces sediment that damages marine resources, fills navigational channels, degrades water quality and, in general, adversely affects the environmental quality; therefore, the General Assembly hereby recognizes shore erosion as a problem which directly or indirectly affects all of the citizens of this State and declares it the policy of the State to bring to bear the State's resources in effectuating effective practical solutions thereto.

Drafting Note: This section is stricken because it is a declaration of policy.

§ ~~21-11-17~~ 10.1-700 . Definition.—As used in this article, the term "shore erosion" means the process of destruction by the action of water, wind, and/or ice of the land bordering a large body of water including all tidal rivers in Virginia, the Virginia portion of the Chesapeake Bay shoreline, and the Virginia portion of the Atlantic Ocean shoreline and the tidal waters of the Commonwealth .

Drafting Note: The definition was revised to conform to the actual practice of the Department.

§ ~~21-11-18~~ 10.1-701 . Responsibility Duties of Soil and Water Conservation Commission Department .— In addition to the other duties and responsibilities conferred by this chapter, the Virginia Soil and Water Conservation Commission shall have the duty and responsibility to make the necessary coordination of shore erosion control programs of all state agencies and institutions, other than those affecting public beaches, and to secure the cooperation and assistance of the United States and any of its agencies to protect waterfront property from destructive erosion; to evaluate the effectiveness and practicability of current programs; and to 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. The Department shall have the duty to:

1. Coordinate shore erosion control programs of all state agencies and institutions; 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.

Such coordination shall not restrict the statutory authority of the individual agencies having responsibilities relating to shore erosion control.

Drafting Note: The duties of the Department were listed but the substance was not changed. Commission has been changed to Department throughout this article. The last sentence is included in subdivision 1. The last phrase of subdivision 1 is stricken because the Department's

coordination now includes public beaches.

~~§ 21-11-19. § 10.1-702. Employment of personnel; Shore Erosion Advisory Service Office .--The Virginia Soil and Water Conservation Commission Department is authorized to employ personnel to assist in carrying out the coordination responsibility of shore erosion control programs as herein assigned, and to establish a Shoreline Erosion Advisory Service Office .~~

Drafting Note: No change in the law.

~~§ 21-11-20. § 10.1-703. Cooperation and coordination with Virginia Institute of Marine Science. --The Soil and Water Conservation Commission Department shall cooperate and coordinate with the Virginia Institute of Marine Science of the College of William and Mary for research, training and technical advice on erosion-related problems.~~

Drafting Note: No change in the law.

~~§ 21-11-16-1. § 10.1-704. Use of dredged material for beach nourishment; priority.-- It is the intent of the General Assembly that the 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.~~

Drafting Note: The wording of this section was changed because it stated legislative intent.

Article 2.

Public Beach Conservation and Development Act.

~~§ 10-215. Findings of the General Assembly.--The General Assembly of Virginia finds that:~~

1. The Constitution of Virginia sets forth that it shall be the policy of the Commonwealth to protect its atmosphere, lands and waters from pollution, impairment or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

2. The shores of the Commonwealth of Virginia constitute a resource of inestimable value to all persons of the State;

3. Public beaches provide important recreational and aesthetic opportunities to the general public as well as contribute significantly to the economic welfare of the Commonwealth and its localities;

4. Public beaches are a rare and valuable resource and should be conserved and developed;

5. Public beaches are eroding, thereby diminishing important recreational, aesthetic and economic benefits associated with such areas;

6. Public awareness of the values of shore areas, the causes and effects of erosion and techniques to control erosion is low; and

7. The level of research and development activities in the area of new erosion control methods and new sources of sand for public beach conservation and development is inadequate to satisfactorily address the magnitude of the problem.

Drafting Note: This section is stricken because it states legislative policy.

~~§ 10-217. § 10.1-705. Definitions.-- For the purposes of this chapter the following words shall have the meanings ascribed to them As used in this article, unless the context requires a different meaning :~~

"Agency of this State 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 on Conservation and Development of Public Beaches as provided in § 10-218 .

"Director" means the Director of the Department of Conservation and Historic Resources.

"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 of Virginia .

“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 ; ~~county~~ or town.

“Program” means the provisions of the Public Beach Conservation and Development Act (~~§ 10-215 et seq.~~) .

“Public beach” means a sandy beach located on a tidal shoreline suitable for bathing in a ~~city~~; 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.

~~“State” or “Commonwealth” means the Commonwealth of Virginia.~~

“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.

~~“Develop” or “development” means the replenishment and restoration of existing public beaches.~~

Drafting Note: The definitions were arranged in alphabeticcal order. The definitions of “Director” and “State” were stricken as they are unnecessary. Director is defined in Chapter 1 for the entire subtitle.

~~§ 10-216 10.1-706 . Declaration of policy Duties of the Department .— In consideration of the findings in § 10-215, the General Assembly hereby declares that it is the policy of the Commonwealth: The Department shall:~~

~~1. To conserve, protect, improve, maintain and develop public beaches for the benefit, use and enjoyment of the citizens of the Commonwealth;~~

~~2. To promote 1. Promote understanding of the value of public beaches and the causes and effects of erosion;~~

~~3. To make 2. Make available information concerning erosion of public beaches;~~

~~4. To encourage 3. Encourage research and development of new erosion control techniques and new sources of sand for public beach enhancement;~~

~~5. To provide a program by which localities can apply for funding of conservation, protection, improvement, maintenance and development of public beaches; and~~

~~6. To address erosion on a reach basis where possible.~~

Drafting Note: This section is rewritten as duties of the Department.

~~§ 10-218 10.1-707 . Commission Board continued as Board ; duties; meetings; compensation; allocation of funds.—A. The Commission on Conservation and Development of Public Beaches is continued and shall hereafter be known as the The Board on Conservation and Development of Public Beaches : The Board shall: (i) review the financial needs of localities for implementation of the Public Beach Conservation and Development Act (§ 10-215 et seq.); (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 Board is continued and shall be composed of eight members as follows: One member ex officio shall be selected from each Department or Commission by the Directors of the Virginia Marine Resources Commission, and the Department of Conservation and Historic Resources or their designees and six members-at-large shall be appointed by the Governor subject to confirmation by the General Assembly. Members-at-large shall be appointed for terms of four years four-year terms . Members-at-large are who have served two successive full terms shall be ineligible for reappointment after two terms until four years have elapsed since their last appointment. All terms shall begin July 1, and appointments to fill vacancies occurring shall be for the unexpired term. A chairman shall be selected from among the members-at-large.~~

B. 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.

C. The Board shall meet once prior to the beginning of each fiscal year to receive applications for grants from localities and to determine the allocation of such grants, and as often throughout the year as necessary.

D. Board members shall be compensated at the rate and manner provided by § 14.1-18 of this Code.

E. D. The Department of Conservation and Historic Resources shall provide the Board with staff assistance from time to time if required and shall maintain such necessary financial records of activities as are necessary.

Drafting Note: Subsection A has become subsection B and vice versa. Unnecessary language has been stricken. Subsection D was stricken because § 14.1-18 applies to members of the General Assembly.

~~§ 10-219.~~ 10.1-708. Relationship of Board and Director; ~~regulations~~ guidelines.—The Board shall be responsible for the allocation of the grant fund established in § ~~10-220~~ 10.1-709. The Board shall submit the names of recipient localities to the Director of the Department of Conservation and Historic Resources and the Director shall disburse funds to designated localities. The Board may promulgate regulations establish guidelines governing application procedures, allocation guidelines allocations or implementation standards.

Drafting Note: No change in the law.

~~§ 10-220~~ 10.1-709. Establishment of fund; unexpended money.—A. A 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 thirty 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 such the fund. Localities may, however, combine state and local funds to match equally federal funds for purposes of securing federal grants.

B. Money which remains unexpended from such 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.

Drafting Note: No change in the law.

~~§ 10-221~~ 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;
- 6a- 7. Actions of a locality which lead to, or may result in, the erosion of beaches; and
- 7- 8. Such other matters as the Board shall deem sufficient for consideration.

Drafting Note: Equally is stricken in subsection A because not all grants require equal matches.

~~§ 10-222~~ 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.

Drafting Note: No change in the law.

CHAPTER 8.

HISTORIC LANDMARKS AND MONUMENTS.

§ 10-135. Commission continued as Board.—The Virginia Historic Landmarks Commission within the executive branch of state government is continued and shall hereafter be known as the Virginia Historic Landmarks Board.

Drafting Note: The Board is continued through a provision added to proposed § 10.1-800.

§ 10-136 10.1-800 . Membership; appointment; terms; vacancies; compensation and expenses Virginia Historic Landmarks Board .—A. ~~The Board~~ The Virginia Historic Landmarks Board is continued within the executive branch of state government and shall consist of eleven members. Nine shall be appointed by the Governor and the remaining two shall be the Director of the Department of Conservation and Historic Resources and the State Librarian both as ~~ex officio~~ members, but with full voting rights .

B. Of the nine members appointed by the Governor, one may be chosen from a list of three names submitted to him by the Association for the Preservation of Virginia Antiquities, one may be chosen from a list of three names submitted to him by the Virginia Historical Society, one may be ~~taken~~ chosen from a list of three names submitted to him by Colonial Williamsburg, Incorporated, one may be chosen from a list of three names submitted to him by the Dean of the School of Architecture, University of Virginia, one may be chosen from a list of three names submitted to him by the Virginia Society of the American Institute of Architects and the remainder shall be appointed from the Commonwealth at large. Two members of the Board shall be professional archaeologists.

C. Appointments shall be made for four-year terms of four years , except appointments to fill vacancies occurring other than by expiration of term, which shall be filled for the unexpired term.

D. No member of the Board shall receive compensation for his services. Members shall be reimbursed for their necessary expenses incurred in the performance of their duties.

Drafting Note: Subsection D was stricken because § 14.1-5.2 provides for reimbursement.

§ 10-137. Executive Director.—The Governor may appoint an Executive Director who shall serve at his pleasure. The Executive Director may employ such employees, assistants and technical personnel as may be required for the performance of the Board's duties.

Drafting Note: Since the administrative staff for the Historic Landmarks Board is made up of DCHR employees, existing § 10-137 appears obsolete.

10.1-801. Duties of Historic Landmarks Board.—The Historic Landmarks Board shall:

1. Designate historic landmarks and historic districts and withdraw designation for failure to retain the characteristics which led to designation;

2. Establish and endorse appropriate historic preservation practices for the care and management of designated landmarks ;

3. With the consent of the landowners, provide appropriately designed markers for designated buildings, structures, districts, objects and sites;

4. Approve the proposed text and authorize the manufacture of highway historical markers;

5. Acquire by purchase, gift, or lease and administer designated landmarks, sites and easements and interests therein; and

6. Review the historic and commemorative attraction services of the Department and make recommendations to the Director and the Governor concerning the effectiveness of the services.

Drafting Note: This section is composed of existing §§ 10-138 and 10-259. Some of the duties currently held by the Board are included in proposed § 10.1-804 because they are exercised by the Director rather than the Board. Subdivisions 3 and 5 of this section are exercised by both the Director and the Board and are also listed in § 10.1-804. Subdivision 6 is existing § 10-259. It was placed in this section so that all duties of the Board would be in one section.

§ 10-138 10.1-802 . Powers and duties Designation of Historic landmarks Board .—The Historic

Landmarks Board shall :

(a) Make a survey of, and designate ~~designate~~ as an historic landmark landmarks , the buildings, structures, districts, objects, and sites which constitute the principal historical, architectural and archaeological sites which are of statewide or national significance. No structure or site shall be deemed to be an ~~designated~~ as historic one unless it has been prominently identified with, or best represents, some major aspect of the cultural, political, economic, military, or social history of the Commonwealth or nation, or has had a major relationship with the life of an ~~a historic personage~~ person or event representing some a major aspect of, or ideals related to, the history of the Commonwealth or nation. ~~In the case of structures which are to be so designated, they~~ In order to be designated a historic landmark, a structure shall embody the principal or unique features of an architectural type or demonstrate the style of a period of our history or method of construction, or serve as an illustration of the work of a master builder, designer or architect whose genius influenced the period in which he worked or has significance in current times. In order for a site to qualify as an archaeological site, it shall be an area from which it is reasonable to expect that artifacts, materials and other specimens may be found which give insight to an understanding of aboriginal man or the Colonial and early history and architecture of the Commonwealth or nation.

Drafting Note : This section was revised to include only a description of designation procedures. Portions of existing § 10-138 that deal with powers and duties of the Board are included in proposed § 10.1-801.

~~§ 10-138.2~~ 10.1-803 . Procedure for designating a historic district; ~~When public public~~ hearings may be held ; historic district defined.—A. In any county, city ; or incorporated town in which where the Board determines Historic Landmarks Board proposes to designate historic districts if the Department shall notify the governing body of such county, city, or incorporated town in writing of its proposed action prior to officially making same . If the governing body, by resolution adopted and delivered to the Board Department within thirty days after receiving the Board's Department's notification, so requests, a public hearing shall be held at the seat of government of the county, city, or incorporated town in which the proposed historic district is located : At the governing body's request, the hearing shall be held or within the proposed historic district rather than at the seat of government . When a public hearing has been requested, the Department Board at its expense shall cause have a notice to be published in a newspaper having general circulation in the county, city, or incorporated town for two consecutive weeks setting forth the purpose, place and time of the hearing. The hearing shall be held within sixty days following the Board's Department's initial notice to the governing body. The hearing shall be for the purpose of supplying additional information to the Historic Landmarks Board.

B. For the purposes of the this chapter, an a historic district shall mean means a geographically definable area ; which contains a significant concentration of historic buildings, structures or sites ; sharing a common historical, architectural or cultural heritage.

C. The provisions of this section shall not be so construed as to affect any pending litigation.

Drafting Note : The Department is responsible for proper notice rather than the Board. Subsection C is stricken as unnecessary.

(b)

Prepare and a register of buildings and sites which meet the requirements of the preceding paragraph ; publish lists of such properties and inspect such properties from time to time ; publish a register thereof from time to time setting forth appropriate information concerning the registered buildings and sites.

§ 10.1-804. Additional powers and duties of the Director.—In addition to the powers and duties conferred upon the Director elsewhere in this subtitle, the Director shall:

1. Conduct a broad survey and 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;

2. Publish lists of properties designated as landmarks by the Board, inspect designated properties from time to time, and periodically publish a complete register of designated properties setting forth appropriate information concerning those properties;

(e) 3. With the consent of the landowners, certify and mark, with provide appropriately designed markers ; for designated buildings , structures, districts, objects and sites which it has

registered : ;

(d) Establish standards for the care and management of certified landmarks and withdraw such certification for failure to maintain the standards so prescribed.

(e) 4. Acquire by purchase, gift, or lease and administer registered *designated* landmarks, sites and easements and interests therein ; such acquisition may be made from funds provided by law or otherwise . Where the Commonwealth's acquisition of an easement or other partial interest in property places restrictions on the use or development of that property, assessments for local taxation of the property shall reflect any resulting change in the market value of the property, as prescribed in § 58.1-2205. ;

(f) 5. Lease or sell property so acquired under terms and conditions designed to ensure the proper preservation of the landmark or site in question : ;

(g) [Repealed.]

(h) Identify historical districts for registered landmarks and aid 6. Aid and encourage the county or city in which the district or landmark is located counties, cities and towns to establish historic zoning districts for designated landmarks and to adopt such rules and regulations as the Board may develop and recommend regulations for the preservation of historical, architectural, or archaeological values : ; and

(i) [Repealed.]

(j) 7. Seek the advice and assistance of individuals, groups and governments who or which are conducting historic preservation programs and coordinate the same insofar as programs when possible.

(k) Seek and accept gifts, bequests, endowments and funds from any and all sources for the accomplishment of the function of the Board.

(l) [Repealed.]

Drafting Note : The powers and duties prescribed in proposed § 10.1-804 are actually powers exercised by the Director rather than the Board. Proposed § 10.1-804 sets them out accordingly. Existing subsection (k) is deleted since it is listed as a general power of the Director in Chapter 1. The last sentence of existing subsection (e) is set out as a separate section (§ 10.1-808) because it does not relate to the Director's powers. The power to conduct surveys is currently listed as a power of the Board, it has been transferred to this section because it is actually exercised by the Director. The second subdivision regarding publication of lists was rewritten. Currently landmarks, etc. are referred to as "registered" or "designated" throughout this chapter. References to "registered" are being replaced with "designated" for consistency.

§ 10-255 10.1-805 . Commemorative facilities and historic sites management ; duties of Director .- It shall be the policy of the Commonwealth A. 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 : ~~The and in order to encourage, stimulate and support the identification, protection, preservation and rehabilitation of the Commonwealth's significant historic, architectural and archeological sites, the Director is charged with~~ has the following duties and responsibilities :

1. To ensure that state 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 purchases 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 by law for the State Highway and Transportation Commissioner in §§ 33.1-89 through 33.1-132 of the Code of Virginia ;

4. ~~To convey by lease and~~ To lease acquired property to any person, association, firm or corporation for such term and on such terms and conditions as determined by the Director may determine with the Governor's consent ; and

5. To adopt a flag, seal and other emblems for use in connection with such facility and to copyright the same in the name of the Commonwealth .

§ 10-258. *Historic sites management.*—It shall be the policy of the Commonwealth to encourage, stimulate and support the identification, protection, preservation, and rehabilitation of the Commonwealth's significant historic, architectural and archaeological sites in order to enhance the values upon which Virginia and the nation were founded and to serve as a means of illustrating to present and future generations the inherent worth of such values. The ; the Director is charged with the following duties and responsibilities:

1. To assist in identification of historic districts for registered landmarks and aid and encouragement of the county or city in which the district or landmark is located to adopt such rules and regulations as the Department may develop and recommend for the preservation of historical, architectural and archaeological values.

2 5 . To prepare and place state historie , in cooperation with the Department of Transportation, highway historical markers approved by the Historic Landmarks Board on or along the highway or street closest to the location which is intended to be identified upon such by the marker ; ; and

3. To exercise power of eminent domain in order to preserve any historic monument or memorial in the Commonwealth, whether it should be held by any private person, city, town or county in the Commonwealth. The Department may proceed in the manner provided by law for the State Highways and Transportation Commissioner in Article 7 (§§ 33.1-89 et seq.) of Title 33.1 of the Code of Virginia.

4 6 . To maintain and operate a Research Center for Archaeology for the purpose of conducting archaeological research and carrying out any other duties the Director may assign. The Research Center shall be headed by a State Archaeologist acting under the general supervision of the Director.

Drafting Note : Existing §§ 10-255 and 10-258 both relate to the powers of the Director for managing commemorative and historic sites respectively. Both sections are combined in proposed § 10.1-805 for easier reference. The second paragraph of existing § 10-258 is stricken because it duplicates subdivision 6 of proposed § 10.1-804. The second subdivision 3 was stricken because it repeats language in the first subdivision 3.

§ 10-261 10.1-806 . Designating and maintaining *commemorative and historic sites ; duties of Department .*—The Department shall have the following duties and responsibilities relating to *commemorative and historic sites management :*

1. To seek and obtain from landowners of registered *designated* landmarks such reasonable restrictions upon the use of the property so as to perpetuate and preserve the so that features which led to the designation of the property as an historic landmark will be preserved . All such agreements shall be in writing and, when duly signed, shall be recorded in the clerk's office of the county or city wherein where deeds are admitted to record. After the agreements are recorded, the Department shall notify the appropriate tax-assessing officials of the restrictions ; ; and

2. To develop a procedure for the certification of historic districts and structures within the historic districts for federal income tax purposes.

3. To issue a certificate to permit the posting or constructing of a marker that commemorates a person, place or event that is prominently identified with, or best representative of, a major aspect of state or national history. The Department shall act on applications for certificates as promptly as practicable. 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 Virginia bearing any legend, inscription or notice which purports to record an 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 an appropriate state agency attesting to the validity and correct record of the historic event, incident or fact set forth in the marker.

Drafting Note : Subdivision 3 is stricken because it is repetitive with existing § 10-145.2 (proposed § 10.1-810).

§ 10-137.1 10.1-807 . *Commissioner, Division of Historic Landmarks State Historic Preservation Officer.*— . The ~~Commissioner~~ Director of the Division of Historic Landmarks shall be appointed by the Director, Department of Conservation and Historic Resources. The ~~Commissioner~~ Director of the Division of Historic Landmarks shall also serve as the State Historic Preservation Officer

for the purposes of carrying out the National Historic Preservation Act of 1966, as amended. The Director may employ such additional personnel as may be required for the performance of the duties of the Board and the State Historic Preservation Officer.

Drafting Note: Necessary personnel can be hired through general powers conferred upon the Director.

§ 10.1-808. *Property to reflect change in market value.*—Where the Commonwealth's acquisition of an easement or other partial interest in property places restrictions on the use or development of that property, 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 in which the structure or site is located.

Drafting Note : This provision was originally set out in existing § 10-138(e). Since it does not relate to a power of the Director, it is set out here as a separate section. The second sentence is relocated from existing § 10-139.

~~§ 10-138.1~~ 10.1-809 . Supervision of expenditure of appropriations made to nonstate agencies.—In addition to the duties set out in § 10-138, it shall also be the responsibility of the The Department to shall oversee the expenditure of state appropriations made available to nonstate agencies, whether private or municipal, for purposes related to the historical collections, historic landmarks, and historic sites of Virginia, and to assure itself to assure that such purposes are consistent with the statewide plan for historic preservation as established by the Department. The Department 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 ; in order that public funds are used in the most appropriate, effective, and correct manner .

Drafting Note: No change in the law.

§ 10-139. Notice to local tax-assessing official that structure or site has been designated a certified landmark.—In any case in which the Board designates a structure or site as a certified landmark, it shall notify the official having the power to make assessments of properties for purposes of taxation within the county or city in which the structure or site is located.

Drafting Note : This provision has been relocated to proposed § 10.1-808.

§ 10-139.1. Acceptance of gifts.—Gifts, articles, or artifacts of archaeological importance may be accepted on behalf of the Commonwealth by the Board and shall not require prior approval of the Governor for the acceptance of such gifts, articles or artifacts.

Drafting Note : This authority is vested with the Director in the general powers set forth in Chapter 1.

§ 10-144. Transfer of powers, etc., of State Librarian and State Library Board relating to historical markers.—All powers, duties and functions of the State Librarian and the State Library Board relating to the erection, maintenance and control of historical markers under Article 6 (§ 42-66 et seq.) of Chapter 6 of Title 42 of the Code of Virginia are hereby transferred to, and vested in the Board, and, for these purposes, the Board shall have all the powers and duties, including the appointment of committees, heretofore exercised by the State Library Board except as provided in § 10-145.6.

Drafting Note : The Board has authority to provide historical markers through proposed § 10.1-801. There is no need to repeat that here or to specify where the authority originated.

§ 10-145. Construction of chapter.—This chapter being designed for the public welfare and the perpetuation of those structures and areas which have a close and immediate relationship to the values upon which this State and the nation were founded, and which serve as a means of illustrating to present and future generations the inherent worth of such values and the unchangeable truths thereby demonstrated, shall be broadly construed in order to accomplish the purposes herein set forth.

Drafting Note : This is a general rule of statutory interpretation and is stricken as unnecessary.

§ 10-145.1. Power of eminent domain vested in Attorney General to preserve historical monuments and memorials.—It is hereby declared to be the policy of this Commonwealth that the traditions and memorials of its history are in the public interest of the people of the Commonwealth as a whole.

The Attorney General is hereby vested, if it appears to him to be in the public interest, with the power of eminent domain, in the name of the Commonwealth, in order to preserve any historical monument or memorial in the Commonwealth, whether it should be held by any private person, city, town or county in the State. Proceedings brought hereunder shall conform

to the provisions of Article 7 (§ 33.1-80 et seq.) of Chapter 1 of Title 33.1 of the Code of Virginia.

Drafting Note : The Director is authorized to exercise the power of eminent domain in § 10.1-805A.3., making existing § 10-145.1 unnecessary.

~~§ 10-145.2 10.1-810 .~~ ~~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 State 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 prior to July 1, 1950, by the former division of archaeology and history of the Virginia Conservation Commission, with the approval of that Commission, or has been issued on or after July 1, 1950, by the State Library Board or by its designation the State Librarian or his duly authorized agent or employee, such certificate setting forth that after due investigation and inquiry such legend, inscription or notice appears to be a true and correct record of the historic event, incident or fact set forth therein.~~

~~After July 1, 1976, a certificate may be issued if the proposed marker commemorates a person, place or event that is prominently identified with, or best representative of, a major aspect of state or national history.~~

~~Applications for such certificates shall be acted on as promptly as practicable by the Historic Landmarks 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.~~

Drafting Note : Outdated language is stricken and language from existing § 10-261 (proposed § 10.1-896) is incorporated.

~~§ 10-145.6 10.1-811 .~~ ~~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 Virginia Historic Landmarks 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 must be approved as provided in § 10-145.2 10.1-810 .~~

Drafting Note : No change in the law.

~~§ 10-145.7. Resolutions of General Assembly.—It is hereby declared to be the sense of the General Assembly that, the State Library Board and its Advisory Committee on Historical Markers having been designated as the state agencies to determine the textual accuracy, historical significance and appropriate location of historical markers, their attention can appropriately be invited to the desirability of markers in particular cases by resolutions adopted by this body.~~

Drafting Note : Existing section § 10-145.7 appears to be unnecessary and is stricken.

~~§ 10-145.8. Penalty for violation; proceedings by Attorney General.—Any person who shall violate either as agent, or principal, or both, any of the provisions of §§ 10-145.2, 10-145.6, and 10-145.7 shall be guilty of a misdemeanor and upon conviction thereof shall be punishable for each separate offense by a fine of not less than \$1 nor more than \$100.~~

~~At the relation of any interested person the Attorney General may, and at the relation of the State Librarian he shall, institute and maintain appropriate proceedings in the name of the Commonwealth, in any court having jurisdiction thereof, for the purpose of remedying by injunction, mandamus or other process any violation of the provisions of §§ 10-145.2, 10-145.6, and 10-145.7.~~

Drafting Note : The penalty provision is outdated and is not used so it is stricken.

~~§ 10-145.10. Certification of historic districts and structures within historic districts for federal income tax purposes.—A. The Board shall certify historical districts and historical structures located within such districts for the purpose of qualifying such structures for the federal income tax deduction with respect to the amortization of certain rehabilitation expenditures pursuant to~~

section 2124 (a) of the Tax Reform Act of 1976. Any historical district or structure located within such district which is listed in the National Register or which complies with the National Register's "Standards for Evaluating Structures within Historic Districts," respectively, shall be certified by the Board upon application by the taxpayer owning such structure. Application shall be made on forms to be furnished by the Board and shall include, but not be limited to the following information:

- (1) Name of owner;
 - (2) Name and address of structure;
 - (3) Name of historic district;
 - (4) Current photographs of structure;
 - (5) Brief description of appearance including alterations, distinctive features and spaces, and date(s) of construction;
 - (6) Brief statement of significance (architectural or historical); and
 - (7) Signature of property owner requesting certification.
- B. A certificate of rehabilitation shall be issued by the Board to persons rehabilitating historical structures certified pursuant to subsection A, upon an evaluation and determination by the Board that:
1. Every reasonable effort was made to use the structure for its originally intended purpose or provide compatible use which required minimum alteration to the structure and its environment;
 2. The rehabilitation work did not destroy the distinguishing qualities or character of the structure and its environment and that removal or alteration of any historic material or architectural features was held to a minimum;
 3. Deteriorated architectural features were repaired rather than replaced, wherever possible, and in the event replacement was necessary, the new material matched the material being replaced in the composition, design, color, texture, and other visual qualities and that the repair or replacement of missing architectural features was based on accurate duplications of original features, substantiated by physical or pictorial evidence rather than on conjectural designs or the availability of different architectural features from other buildings;
 4. Any distinctive stylistic features or examples of skilled craftsmanship which characterized the historic structure and predated the mass production of building materials were treated with sensitivity;
 5. Any changes which took place in the course of time are evidence of the history and development of the structure and its environment and that such change was recognized and respected;
 6. The structure was recognized as a product of its own time and no alterations to create an earlier appearance were performed;
 7. Contemporary designs for additions to existing structures or landscaping were not constructed unless such design was compatible with the size, scale, color, material and character of the neighborhood, structures or its environment; and
 8. Wherever possible, any additions or alterations to the structure were done in such a manner that if they were ever removed the essential form and integrity of the original structure would be unimpaired.
- A copy of each such certificate issued shall be mailed to the applicant requesting the certificate and to the Secretary of the Department of the Interior.

C. The Board shall furnish such information, as may be requested, to the United States Department of the Interior regarding the certification and rehabilitation of historical structures and may prepare such informational pamphlets and bulletins, as it deems necessary, for public distribution concerning applications and standards for certification and certificates of rehabilitation. The Board may promulgate rules and regulations, consistent with the provisions

herein, for the orderly administration of this section.

D. Should any part or application of this section be held invalid by rule or regulation of the Secretary of the Interior or the Secretary of the Department of the Treasury, then all other parts and applications of this action shall be given full force and effect insofar as possible and to this end the provisions and applications of this section are severable.

Drafting Note : This section is being repealed because the process it describes is covered by federal regulation. Because federal law and regulation set up the process for certifying tax credit projects, reference to DCHR's participation on behalf of Virginia is adequately addressed in proposed § 10.1-806(2) (existing § 10-261).

~~§ 10-145.11~~ ~~10.1-812~~ . Disbursement of funds appropriated for caring for Confederate cemeteries and graves.—A. ~~The~~ *At the direction of the Department, the* Comptroller of the Commonwealth is instructed and empowered to draw *annual* warrants upon the State Treasurer ~~at the direction of the Department annually~~ in favor of the treasurers of the Confederate memorial associations and chapters of the United Daughters of the Confederacy set forth in subsection B for the sums of money provided thereby payable out of any appropriations from the general fund for the purposes enumerated in this section. Such sums shall be expended by the associations and organizations in caring for their respective Confederate cemeteries and graves ~~therein~~ 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 ~~said such~~ soldiers and sailors. All such associations and organizations, through their proper officers, are ~~hereby~~ required after July 1 of each year to submit to the Department a certified statement that the funds appropriated to the association or organization in the preceding fiscal year were or will be expended in caring for cemeteries ~~herein~~ 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 ~~said such~~ soldiers and sailors. An association or organization failing to comply with any of the requirements ~~specified herein~~ *of this section* shall be prohibited from receiving moneys allocated under this section for all subsequent fiscal years until ~~such time as such~~ the association or organization fully complies ~~therewith~~ *with the requirements* .

B. Allocation of appropriations made pursuant to this section shall be as set forth opposite the association's or organization's name, or as requested by each association or organization on the basis of \$5 for each grave, monument or marker in the care of a Confederate memorial association or chapter of the United Daughters of the Confederacy not to exceed the total sum of \$3,000.

IN THE COUNTIES OF:

Accomack	
Robert E. Lee Chapter, U.D.C., Belle Haven..	\$ 50.00
Albemarle	
Albemarle Chapter, U.D.C.....	250.00
Mountain Plain Cemetery, Crozet.....	75.00
Mt. Zion United Methodist Church, Esmont....	50.00
Scottsville Chapter, U.D.C.....	200.00
Westerly Chapel Cemetery, Free Union.....	75.00
Amelia	
Grub Hill Church.....	50.00
Appomattox	
Appomattox Chapter, U.D.C.....	250.00
Botetourt	
Fairview Cemetery Association, Inc.....	100.00
Glade Creek Cemetery Corporation.....	50.00
Buchanan	
Ratliff.....	150.00
Carroll	
Robinson Cemetery.....	50.00
Worrell Cemetery.....	50.00
Charles City County	
Salem Church Cemetery.....	175.00
Culpeper	
Culpeper Chapter, U.D.C.....	50.00
Dinwiddie	
Dinwiddie Confederate Memorial Association..	75.00
Fairfax	
Fairfax Chapter, U.D.C.....	75.00
Robert E. Lee Chapter No. 56.....	180.00
Fauquier	

Black Horse Chapter, U.D.C.....	50.00
Marshall Cemetery.....	50.00
Piedmont Chapter, U.D.C.....	50.00
Upperville Methodist Church Cemetery.....	50.00
Floyd	
Floyd County Confederate Memorial Association	100.00
Fluvanna	
Southward Cemetery.....	50.00
Giles	
McComas Chapter, U.D.C.....	75.00
Goochland	
Goochland Chapter, U.D.C.....	75.00
Grayson	
A. B. Cox Cemetery.....	50.00
Atkins Memorial Cemetery.....	50.00
Bethel Church Cemetery.....	50.00
Bridlecreek Cemetery.....	50.00
Camet B. Cox Cemetery.....	50.00
Comer's Rock Cemetery.....	50.00
Cox's Chapel.....	50.00
Fellowship Baptist Cemetery.....	50.00
Fies Ridge Cemetery.....	50.00
Forest Cemetery.....	50.00
Fox Creek Cemetery.....	50.00
Funk Cemetery.....	50.00
Gold Hill Cemetery.....	50.00
Grubbs Chapel Cemetery.....	50.00
Hale Cemetery.....	75.00
Hines Branch Cemetery.....	50.00
Independence Cemetery.....	50.00
Jerusalem Methodist Episcopal Church Cemetery	50.00
Lebanon Cemetery.....	50.00
Liberty Hill Cemetery.....	75.00
Long Branch Cemetery.....	50.00
New Hope Cemetery.....	50.00
Oak Grove Cemetery.....	50.00
Potato Creek Cemetery.....	50.00
Pugh Cemetery.....	50.00
Rhudy Cemetery.....	50.00
Round Meadows Cemetery.....	50.00
Rugby Cemetery.....	50.00
Saddle Creek Cemetery.....	50.00
Sawyers Family Cemetery.....	50.00
Spring Valley Cemetery.....	50.00
Whitetop Cemetery.....	50.00
Greene	
Gentry Methodist Church Cemetery.....	50.00
Halifax	
Grace Churchyard, Inc., Seaton.....	15.00
Halifax Chapter, U.D.C.....	100.00
St. John's Episcopal Church.....	15.00
Hanover	
Hanover Chapter, U.D.C.....	100.00
Isle of Wight	
Isle of Wight Chapter, U.D.C.....	100.00
Lee	
Light Horse Harry Lee Chapter, U.D.C.....	500.00
Ely Cemetery.....	150.00
Loudoun	
Ebenezer Cemetery.....	75.00
Lakeview Cemetery, Hamilton.....	75.00
Lee Chapter No. 179.....	50.00
Leesburg Union Cemetery.....	75.00
Sharon Cemetery, Middleburg.....	100.00
Louisa	
Oakland Cemetery.....	350.00
Madison	
Madison Chapter, U.D.C.....	50.00

Mecklenburg	
Boydton Chapter, U.D.C.....	50.00
Armistead-Goode Chapter, U.D.C.....	50.00
Montgomery	
Doctor Harvey Black Chapter, U.D.C.....	50.00
White Cemetery, Inc.....	50.00
Nelson	
Nelson County Confederate Memorial Association	50.00
Nottoway	
Confederate Memorial Board.....	75.00
Orange	
Maplewood Cemetery, Gordonsville.....	300.00
Preddys Creek Cemetery.....	50.00
13th Virginia Regiment Chapter, U.D.C.....	150.00
Patrick	
Confederate Memorial Association.....	200.00
Pittsylvania	
Rawley Martin Chapter, U.D.C.....	150.00
Powhatan	
Huguenot Springs Cemetery.....	650.00
Prince Edward	
Farmville Chapter, U.D.C.....	250.00
Prince George	
City Point Chapter, U.D.C., for use at Old Town Cemetery.....	100.00
Pulaski	
Pulaski Chapter, U.D.C.....	50.00
Roanoke	
Southern Cross Chapter, U.D.C.....	50.00
Old Tombstone Cemetery.....	100.00
Scott	
Prospect Community Cemetery.....	100.00
McKenney-Carter Cemetery Association.....	100.00
Confederate Memorial Branch, Wolfe Cemetery Association, Yuma.....	75.00
Estill Memorial Cemetery Association.....	175.00
Lawson Confederate Memorial Cemetery.....	50.00
Mount Pleasant Cemetery.....	100.00
Salling Memorial, Slant.....	100.00
Rollins Cemetery.....	50.00
Daugherty Cemetery.....	100.00
Nickelsville Baptist Church Cemetery.....	100.00
Shenandoah	
New Market Confederate Memorial Association..	200.00
Stover Camp Chapter, U.D.C.....	50.00
Mt. Jackson-Old Soldiers Cemetery.....	500.00
Smyth	
Aspenvale Cemetery.....	50.00
Centenary Cemetery.....	50.00
Chatham Hill Cemetery.....	50.00
Greenwood Cemetery.....	50.00
Holston Chapter, U.D.C.....	100.00
Keesling Cemetery, Rural Retreat.....	50.00
Middle Fork Cemetery.....	50.00
Morgan Cemetery, Sugar Grove.....	50.00
Mt. Carmel Cemetery.....	100.00
Mountain View Cemetery, Chilhowie.....	50.00
Mt. Zion Cemetery.....	50.00
Pleasant Hill Cemetery, Groseclose.....	60.00
Ridgedale Cemetery, Rich Valley.....	50.00
Riverside Cemetery in Rich Valley.....	50.00
Round Hill Cemetery.....	100.00
Slemp Cemetery, Sugar Grove.....	50.00
St. James Cemetery, Chilhowie.....	50.00
South Fork Baptist Cemetery.....	50.00
Steffey Cemetery, Groseclose.....	50.00
Wassum Cemetery, Atkins.....	50.00
Zion Methodist Cemetery, Rich Valley.....	70.00

Blue Springs Cemetery, Sugar Grove.....	50.00
Riverside Cemetery on South Fork.....	50.00
Royal Oak Cemetery.....	50.00
St. Clairs Bottom Cemetery, Chilhowie.....	50.00
Sulphur Springs Cemetery.....	50.00
Spotsylvania	
Ladies Confederate Memorial Association....	1,500.00
Surry	
General William Mahone Chapter, U.D.C.....	200.00
Tazewell	
Maplewood Cemetery.....	100.00
Hankins Cemetery.....	100.00
Warren	
Warren Rifles Chapter, U.D.C.....	125.00
Washington	
Anna Stonewall Jackson Chapter, U.D.C.....	100.00
Emory and Henry Cemetery.....	1,015.00
Greendale Cemetery.....	100.00
Warren Cemetery.....	100.00
Wise	
Big Stone Gap Chapter, U.D.C.....	100.00
Wythe	
Asbury Cemetery, Rural Retreat.....	50.00
Fairview Cemetery, Rural Retreat.....	50.00
Galilee Christian Church Cemetery.....	50.00
Grubbs Cemetery.....	50.00
Kemberling Cemetery.....	50.00
Marvin Cemetery.....	150.00
Mt. Ephraim Cemetery.....	50.00
Mount Mitchell Cemetery.....	50.00
Mountain View Cemetery.....	230.00
Murphysville Cemetery.....	50.00
St. John's Cemetery.....	50.00
St. Mary's Cemetery.....	50.00
St. Paul's Cemetery.....	70.00
St. Peter's Lutheran Church Cemetery.....	60.00
Speedwell Methodist Cemetery.....	50.00
Wythe-Gray Chapter, U.D.C.....	100.00
Zion Cemetery.....	50.00
York	
Bethel Memorial Association.....	100.00
IN THE CITIES OF:	
Alexandria	
Old Dominion Rifles Confederate Memorial Association.....	800.00
Bristol	
Bristol Confederate Memorial Association....	300.00
Charlottesville	
Effort Baptist Church.....	50.00
Clifton Forge	
Julia Jackson Chapter, U.D.C.....	75.00
Covington	
Alleghany Chapter, U.D.C.....	150.00
Danville	
Eliza Johns Chapter, U.D.C.....	500.00
Fredericksburg	
Fredericksburg Confederate Memorial Association	1,000.00
Hampton	
Hampton Chapter, U.D.C.....	300.00
Harrisonburg	
Turner Ashby Chapter, U.D.C.....	300.00
Woodbine Cemetery.....	700.00
Lynchburg	
Lynchburg Confederate Memorial Association..	150.00
Manassas	
Ladies Confederate Memorial Association of Manassas	75.00

Martinsville	
Mildred Lee Chapter, U.D.C.....	50.00
Newport News	
Bethel Chapter, U.D.C.....	250.00
Norfolk	
Hope Maury Chapter, U.D.C.....	50.00
Pickett-Buchanan Chapter, U.D.C.....	100.00
Petersburg	
Petersburg Chapter, U.D.C., for Prince	.
George County.....	75.00
Ladies Memorial Association of Petersburg...	700.00
Portsmouth	
Ladies Confederate Memorial Association....	75.00
Radford	
New River Gray's Chapter, U.D.C.....	75.00
Radford Chapter, U.D.C.....	75.00
Richmond	
Centennial Chapter, U.D.C.....	100.00
Elliott Grays Chapter, U.D.C.....	75.00
Janet Randolph Chapter, U.D.C.....	75.00
Lee Chapter, U.D.C.....	100.00
Richmond-Stonewall Jackson Chapter, U.D.C....	550.00
Roanoke	
Roanoke Chapter, U.D.C.....	200.00
William Watts Chapter, U.D.C.....	200.00
Staunton	
Confederate Section, Thornrose Cemetery....	3,000.00
Vinton	
Major Wm. F. Graves Chapter, U.D.C.....	200.00
Williamsburg	
Williamsburg Chapter, U.D.C.....	475.00
Winchester	
Stonewall Confederate Memorial Association..	900.00
E- through E- {Repealed-}	

Drafting Note : No change in the law.

§ ~~10-145.12~~ 10.1-813 . Listing of certain historical societies receiving appropriations.—A. ~~The~~ At the direction of the Department, the Comptroller of the Commonwealth is instructed and empowered to draw annual warrants upon the State Treasurer at the direction of the Department annually , 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.

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.

Drafting Note : No changes proposed in this section. Provisions of Chapter 481 of 1987 Acts of Assembly are incorporated since the effective date is July 1, 1988.

§ ~~10-145-13~~ ~~10.1-814~~ . 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 § ~~10-145-11~~ ~~10.1-807~~ or § ~~10-145-12~~ ~~10.1-808~~ , shall be appropriated or expended for or to historical societies, museums, foundations ~~and~~ , associations or *local governments* for the maintenance of collections and exhibits or for the maintenance and operation of sites and facilities owned by historical organizations unless:

1. A request for state aid ~~shall be~~ *is* filed by the organization with the Department of ~~Conservation and Historic Resources~~ , on forms prescribed by the Department, on or before the opening day of each regular session of the General Assembly in an even-numbered year ~~and~~ . Requests shall be considered by the General Assembly *only* in even-numbered years ~~only~~ unless the request ~~be is~~ of an emergency nature. 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 ; ~~as provided for in this section,~~ to be *the* chairmen of the House of Appropriations and Senate Finance Committees. The review shall examine the merits of each request, including data showing the percentage of nonstate 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 ~~which is~~ filed by a ~~nonstate agency~~ which is not deemed to be a ~~historical society, museum, foundation or association for the maintenance of collections and exhibits or for the maintenance and operation of sites and facilities owned by historical organizations~~ . Such applications shall be governed by the procedures identified in the general appropriations act.

2. Such organization 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.

B. In addition to the requirements of subsection A of this section, no state funds other than for those facilities specified in § ~~10-145-11~~ ~~10.1-812~~ or § ~~10-1-145-12~~ ~~10.1-813~~ shall be appropriated or expended for the renovation or reconstruction of any historic site unless:

1. The property is designated as a historic landmark by the ~~Virginia~~ Historic Landmarks Board and is located on the register prepared by the ~~Board~~ *Department* pursuant to § ~~10-138(b)-~~ ~~10.1-804~~ or has been declared eligible by the *Historic Landmarks* Board for such designation but has not actually been placed on the register of buildings and sites provided for in § ~~10-138(b)-~~ ~~10.1-804~~ ;

2. The society, museum, foundation or association owning such property enters into an agreement with the ~~Board~~ *Department* that ~~such~~ *the* property will be open to the public for at least 100 days per year for a ~~period of~~ no less than five years following ~~the~~ completion, ~~the~~ renovation, or reconstruction; and

3. ~~Such~~ *The* organization ~~shall submit~~ *submits* the plans and specifications of the project to the Department for review and approval ~~in order~~ to ensure that ~~such~~ *the* project meets generally accepted standards for historic preservation.

4. ~~[Repealed.]~~

Nothing contained in this subsection shall prohibit any ~~such~~ organization from charging a

reasonable admission fee during the five-year period required in subdivision 2 herein ; ~~provided such~~ 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 § § ~~10-145-11 10.1-812~~ and § ~~10-145-12 10.1-813~~ and the disbursement of all funds appropriated thereto.

State funds appropriated for the operation of historical societies, museums, foundations and associations shall be expended for use in meeting the expenses of 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.

Drafting Note : "Local governments" was added to subsection A because in practice the General Assembly has also made appropriations to local governments for work on historic buildings owned by those governments. The last sentence of A.1. was rewritten for clarity.

§ ~~10-256 10.1-815~~ . Commission continued as Board; composition; officers *Virginia War Memorial Board* .— A. The Virginia War Memorial Commission is continued and shall hereafter be known as the Virginia War Memorial Board : The Board is continued and shall be composed of fifteen citizens of Virginia as follows: (i) five members of the House of Delegates to be appointed by the Speaker of the House; (ii) four members of the Senate to be appointed by the Committee on Privileges and Elections of the Senate; (iii) five citizens-at-large to be appointed by the Governor; and (iv) the Adjutant General of Virginia.

The *Virginia War Memorial Board* shall appoint from among its membership a chairman, one or more vice-chairmen and a secretary.

§ ~~10-257. Function of Board.~~ B. The *Virginia War Memorial Board* shall have the following powers and duties:

1. To support the Department by serving as custodian of the official "war memorial" which honors patriotic Virginians who rendered faithful service and sacrifice in the cause of freedom and liberty for the Commonwealth and the nation in time of war;

2. To participate with the Department, the military services of the United States, and recognized veterans' organizations in the planning, development and execution of appropriate programs and events that further the purpose of this chapter section ; and

3. To make recommendations to the Director and the Governor concerning the effectiveness of the Department's services to the Director and the Governor .

Drafting Note : Since existing §§ 10-256 and 10-257 relate to activities of the Virginia War Memorial Board, these provisions are combined in proposed § 10.1-815.

§ ~~10-257-1 10.1-816~~ . Names of Virginians "Missing In Action".—The names and home homes of record designation of all Virginians "Missing In Action" as a result of the Vietnam War shall be placed in the Virginia War Memorial.

Drafting Note: No change in the law.

§ ~~10-262 10.1-817~~ . Underwater historic property.—A. "Underwater historic property" shall mean 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 of Conservation and Historic Resources .

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 in any way disturbing disturbance of any underwater historic property without first making application to applying for and receiving a permit from the Virginia Marine Resources Commission for a permit to conduct such operations

pursuant to § 62.1-3 of the Code of Virginia . 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 ~~require~~ *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 ~~percent~~ *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 § 62.1-3 of the Code of Virginia and in such a manner that the maximum amount of ~~historie~~ *historical* , scientific, ~~archaeologic~~ *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~~ *no such* a permit to conduct ~~such~~ operations at substantially the same location described and covered by a permit previously granted if recovery operations are being actively pursued ~~under such~~ *previously granted permit* , unless the ~~person, firm, or corporation holding~~ *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 § 62.1-3 of the Code of Virginia 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.

Drafting Note : Minor style changes only.

CHAPTER 9.

VIRGINIA ANTIQUITIES ACT.

§ 10-150.1. ~~Title.—This chapter shall be known and may be cited as the Virginia Antiquities Act.~~

Drafting Note: This section is being repealed because it is not necessary.

§ 10-150.2. ~~Legislative policy; purpose.—A. The General Assembly declares that it is in the public interest and is the purpose of this chapter to identify, evaluate, preserve and protect sites and objects of antiquity which have historie, scientific, archaeologic or educational value when these sites and objects are located on state-controlled land, or on designated state archaeological sites or zones. It is the policy of the General Assembly and the purpose of this chapter to protect these archaeological sites and objects from neglect, desecration, damage and destruction and to ensure that these sites and objects are identified, evaluated and properly explored so that adequate records may be made.~~

~~B. [Repealed.]~~

Drafting Note: This section is being repealed because it states legislative policy. Its provisions are restated as duties of the Department in proposed § 10.1-901.

§ 10-150.3 ~~10.1-900~~ . ~~Definitions.—As used in this chapter, the following words shall have the meanings stated unless the context requires otherwise a different meaning :~~

~~“Board” means the Virginia Historie Landmarks Board.~~

~~“Department” means the Department of Conservation and Historie Resourees.~~

~~“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.~~

~~“Object of antiquity” means any relic, artifact, remain, 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 Board from 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-controlled land” means any land owned by the Commonwealth or under the primary administrative jurisdiction of any state agency. ~~As used in this chapter, state~~ State agency shall not mean any ~~city, 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.

Drafting Note: The definition of “Department” is stricken because it is defined in the general provisions for this subtitle. The definition of “Board” is stricken because the only reference to “Board” is in the definition of “State archaeological site” which conflicts with proposed § 10.1-905 (existing § 10-150.7) and is therefore changed to Department.

~~§ 10-150.8~~ 10.1-901 . Department; duties.—The Department shall:

1. Coordinate all archaeological research on state-controlled land and in state archaeological sites and zones;

~~2. [Repealed.]~~

~~3.~~ 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, archaeological 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;

~~4.~~ 6. Encourage private owners of designated state archaeological sites to cooperate with the Commonwealth to preserve the site; and

~~5.~~ 7. Encourage a statewide archaeological education program to inform the general public of the importance of its irreplaceable archaeological heritage.

Drafting Note: Existing § 10-150.2 (Legislative policy; purpose) has been included in this section as duties of the Department. The order of the sections in this chapter has been rearranged.

~~§ 10-150.9~~ 10.1-902 . Rules and Department may promulgate regulations.—The Department shall have the authority ~~is authorized~~ to promulgate rules and regulations necessary to identify, evaluate, preserve and protect objects of antiquity and to carry out the provisions of this chapter : The rules and regulations shall be issued pursuant to *in accordance with* the Administrative Process Act ; (§ 9-6.14:1 et seq. of the Code of Virginia) . The rules and regulations shall include but are not limited to the following:

~~1.~~ 1. Issuance of permits to conduct field investigations;

~~2.~~ 2. The qualifications of permit applicants;

~~3.~~ 3. Requirements for reporting the results of field investigations; and

~~4.~~ 4. Provision for the presentation and display of objects of antiquity.

Drafting Note: The word “rule” is stricken because it is duplicative of “regulation” and regulation is the preferred term under the Administrative Process Act. It appears that the Department is authorized but not required to promulgate regulations, yet the section sets out what the regulations shall include. This appears to be a conflict, so the list of what the regulations should include was stricken.

~~§ 10-150.5~~ 10.1-903 . Permit required to conduct field investigations ; ownership of objects of antiquity .—A. It shall be unlawful for any person to conduct any type of field investigation,

exploration or recovery operation involving the removal, destruction or in any way disturbing 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 Department.

B. The Department may issue a permit to conduct field investigations if the Department finds that it is in the best interest of the Commonwealth, and the applicant is an a historic, scientific, or educational institution, professional archaeologist or amateur, who is qualified and recognized in the areas area of field investigations or archaeology.

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 which 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 Department.

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 Department and in a manner to ensure that the maximum amount of historic, scientific, archaeological 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.

Drafting Note: No change in the law.

~~§ 10-150.4 10.1-904 . Control of archaeological sites; ownership of objects of antiquity authority of Department to contract .—A. The Commonwealth of Virginia reserves to itself , through the Department, the exclusive right and privilege of field investigation on sites that are on state-controlled land ; provided, that the . The Department has shall first obtained obtain all permits of other state agencies as is required by law ; provided, further, that the .~~

B. The Department 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.~~

~~§ 10-150.6. Authority of Department to contract. The Department is authorized to and may contract with historic, scientific or educational institutions, professional archaeologists or amateurs, who are qualified and recognized in the areas area of field investigations or archaeology to conduct research on state-controlled lands, and designated archaeological sites and zones.~~

Drafting Note: Existing §§ 10-150.4 and 10-150.6 were combined into one section. Subsection B of existing § 10-150.4 is deleted because that same provision is in subsection C of proposed § 10.1-903 (existing § 10-150.5). The last sentence of subsection A of existing § 10-150.4 was combined with existing § 10-150.6 to form subsection B of proposed § 10.1-904.

~~§ 10-150.7 10.1-905 . Designating archaeological sites and zones.—The Department may designate state archaeological sites and state archaeological zones on private property or on property owned by any city, county , city or town, or board or authority organized to perform local or regional functions in the Commonwealth provided that the Department 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 first having received the consent of the local governing body. Once designated, no person may conduct field Field investigations may not be conducted on such a designated site without first securing a permit from issued by the Department pursuant to § 10-150.5 of this chapter 10.1-903 .~~

Drafting Note: No change in the law.

~~§ 10-150.10 10.1-906 . Violations; penalty.—A. 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 ; and shall constitute a Class 1 misdemeanor .~~

B. Any person who violates subsection A of this section or § 10-150.5 of this chapter 10.1-903 shall be guilty of a Class 1 misdemeanor.

Drafting Note: No change in the law.

CHAPTER 10.

CAVE PROTECTION ACT.

~~§ 10-150.11. Legislative findings and policy.—The General Assembly hereby finds that caves are uncommon geologic phenomena, and that the minerals deposited therein may be rare and occur in unique forms of great beauty which are irreplaceable if destroyed. Also irreplaceable are the archaeological resources in caves which are of great scientific and historic value. It is further found that the organisms which live in caves are unusual and of limited numbers; that many are rare and endangered species; and that caves are a natural conduit for groundwater flow and are highly subject to water pollution, thus having far-reaching effects transcending man's property boundaries. It is therefore declared to be the policy of the General Assembly and the intent of this chapter to protect these unique natural and cultural resources.~~

Drafting Note: This section is being repealed because it states legislative policy. Its provisions are restated as duties of the Department in proposed § 10.1-1002.

~~§ 10-150.12 10.1-1000 . Definitions.—As used in this chapter, the following words shall have the meanings stated unless the context requires otherwise a different meaning :~~

"Board" means the Cave Board.

A. "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.

B. "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.

C. "Gate" means any structure or device located to limit or prohibit access or entry to any cave.

D. "Sinkhole" means a closed topographic depression or basin, generally draining underground, including, but not restricted to, a doline, uvala, blind valley, or sink.

E. "Person" or "persons" means any individual, partnership, firm, association, trust, or corporation or other legal entity.

"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.

F. "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 specifically 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.

G. "Speleothem" means a natural mineral formation or deposit occurring in a cave. This includes or is synonymous with stalagmite, stalactite, helictite, 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.

"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.

H. "Speleogen" means an erosional feature of the cave boundary and includes or is synonymous with anastomoses, scallops, rills, flutes, spongework, and pendants.

I. "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.

J. "Cave life" means any life form which normally occurs in, uses, visits, or inhabits any cave or subterranean water system, excepting those animals and species covered by any of the game laws of the Commonwealth.

"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.

Drafting Note: The definitions were arranged in alphabetical order and the definition of "Board" was added. "Rare or endangered animals" was added to the definition of "Cave life" at the request of DCHR. This term is contained in the stricken policy statement. At the request of DCHR the last phrase of the definition of "Cave life" was stricken because it leaves room for doubt as to who has responsibility for animals in caves – DCHR or the Department of Game and Inland Fisheries.

~~§ 9-152.1 10.1-1001 . Cave Commission continued as Cave Board; purpose; compensation and expenses; qualifications; officers chairman, vice-chairman and recording secretary .– A. The Cave Commission within the Department of Conservation and Historic Resources is continued and shall hereafter be known as the Cave Board. The purpose of the Cave Board shall be to implement the policy set forth in this chapter and to make recommendations to interested state agencies concerning any proposed rule, regulation or administrative policy which would directly affect or bear upon the use and conservation of caves in this Commonwealth. Members of the Cave Board shall meet at least three times each year and serve without compensation and may be reimbursed for their reasonable and necessary expenses incurred in the performance of their duties as Board members.~~

~~B. The Cave Board shall consist of eleven members who shall be appointed by the Governor, subject to confirmation by the General Assembly, on the basis of merit and shall be active and knowledgeable in the conservation, exploration, study and management of caves.~~

~~C. Each member shall be a citizen of Virginia. The members of the Board shall serve for a term of four years, provided that beginning with the first appointments two members shall serve for terms of one year, three members shall serve for terms of two years, three members shall serve for terms of three years, and three members shall serve for terms of four years. The first terms hereunder shall commence July 1, 1980.~~

~~D. The Board shall annually elect a chairman, vice chairman and recording secretary and such other officers as are deemed necessary by the Board membership. A. The Cave Board is continued within the Department of Conservation and Historic Resources and shall consist of 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.~~

Drafting Note: This section was rewritten for organizational purposes and to remove unnecessary language. The reference to the continuation of the Cave Commission is no longer necessary. Section 2.1-42.1 requires confirmation by the General Assembly. The reference to reimbursement was stricken because § 14.1-5.2 provides for reimbursement. References to the initial staggered terms can be removed since that time period has elapsed. The second sentence of existing § 9-152.2 is incorporated in this section. The second sentence of subsection A is included as B.5. of proposed § 10.1-1002.

~~§ 9-152.2. Meetings; records; quorum.—The Cave Board established pursuant to § 9-152.1 shall keep a complete and accurate record of all Board meetings, such record to be available for inspection by the public in the office of the Department of Conservation and Historic Resources during normal work hours. Six members shall constitute a quorum for the transaction of business.~~

Drafting Note: This section is being repealed because the Freedom of Information Act requires the Cave Board to keep records of meetings and have them available for public inspection. The second sentence of this section is incorporated into proposed § 10.1-1001 B.

~~§ 9-152.3~~ *10.1-1002 . Functions Powers and duties of Cave Board .— A. The Cave Board may perform the following functions 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.

~~A.~~ *2. Serve as an advisory board to any requesting state agency on matters relating to caves and karst.*

~~B.~~ *3. Conduct and maintain an inventory of publicly owned caves in Virginia.*

~~C.~~ *4. Provide cave management expertise and service to requesting public agencies and cave owners.*

~~D.~~ *5. Maintain a current list of all significant caves in Virginia and report any real and present danger to such caves.*

~~E.~~ *6. Provide cave data for use by state and other governmental agencies.*

~~F.~~ *7. Publish or assist in publishing articles, pamphlets, brochures or books on caves and cave-related concerns.*

~~G.~~ *8. Facilitate data gathering and research efforts on caves and perform such other functions as may be deemed necessary in keeping with the general purposes of this chapter .*

~~H.~~ *9. Advise civil defense authorities on the present and future use of Virginia caves in civil defense.*

~~I.~~ *10. Advise on the need for and desirability of a state cave recreation plan.*

~~J.~~ *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 groundwater 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.

Drafting Note: This section combines existing §§ 9-152.3, 9-152.4 and 9-152.5 into one section. Legislative policy from existing § 10-150.11 is restated as duties of the Department in this section. Subdivision B5 is from existing § 9-152.1.

~~§ 9-152.4. Additional duties.—In addition to all other duties of the Cave Board, it shall be the responsibility of the Board to study any matters of special concern relating to caves and karst.~~

Drafting Note: This section has become subsection B of proposed § 10.1-1002.

~~§ 9-152.5. Funding and expenditures.—The Board may accept any gift, money, security or other source of funding and is authorized to expend such funds as are necessary in order to effectuate the purposes of this chapter.~~

Drafting Note: This section has become subdivision A1 of proposed § 10.1-1002.

~~§ 10-150.16 10.1-1003 . Archaeology; permits Permits for excavation and scientific investigation ; how obtained; penalties.—A. [Repealed.]~~

~~B. In addition to the written permission of the owner required by § 10-150.13 of this Code, a~~

person must also obtain 10.1-1004 a permit must be obtained from the Department of Conservation and Historic Resources 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 that it is in the best interest of the Commonwealth and that the applicant meets the criteria of this section and is an historic, scientific, or educational institution, professional archaeologist or amateur, who is qualified and recognized in the areas of field investigations or archaeology. 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.

~~C. B.~~ B. All field investigations, explorations, or recovery operations undertaken under this section shall be carried out under the general supervision of the Department of Conservation and Historic Resources and in a manner to ensure that the maximum amount of historic, scientific, archaeological, and educational information may be recovered and preserved in addition to the physical recovery of objects.

~~D. C.~~ C. A person applying for a permit pursuant to this section shall:

1. Have knowledge of archaeology or history as qualified in subsection B hereof ~~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.

~~E. D.~~ D. Any person who fails to obtain a permit required under by subsection B A hereof shall be guilty of a Class 1 misdemeanor. Any violation of subsection ~~D C~~ hereof shall be punished as a Class 3 misdemeanor, and the permit shall be revoked.

~~F. E.~~ E. The provisions of this section shall not apply to any person in any cave located on his own property.

Drafting Note: The qualifications for a permit were moved from subsection A to subsection C. Subdivision C.1. was rewritten to allow historians, biologists and paleontologists to obtain permits, in addition to archaeologists, since this is the current practice.

~~§ 10-150.13~~ 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 (§ ~~10-150.1~~ et seq. 10.1-900 et seq.).

B. ~~The entering~~ *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.
Drafting Note: No change in the law.

~~§ 10-150.14~~ *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.
Drafting Note: No change in the law.

~~§ 10-150.15~~ *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; ~~provided,~~ however, scientific collecting permits may be obtained from ~~any cave commission established for such purpose or from the appropriate state agency~~ *the Department* .

B. Any violation of this section shall be punished as a Class 3 misdemeanor.
Drafting Note: Scientific collecting permits are issued by the Cave Board in conjunction with DCHR.

~~§ 10-150.17~~ *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.
Drafting Note: No change in the law.

~~§ 10-150.18~~ *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.
Drafting Note: No change in the law.

SUBTITLE II

ACTIVITIES ADMINISTERED BY OTHER ENTITIES

CHAPTER 11.

FOREST RESOURCES AND THE DEPARTMENT OF FORESTRY.

Article 1.

Department of Forestry.

~~§ 10-31.1~~ *10.1-1100* . ~~Creation of Department of Forestry ; appointment of the State Forester.—~~ ~~There is hereby created a~~ *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 Economic Development .* The Department shall be headed by the State Forester ; ~~hereinafter referred to in this chapter as the State Forester ,~~ who shall be appointed by the Governor to serve at his pleasure for a term coincident with his own.

~~The State Forester 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.~~ Any vacancy in the office of the State Forester shall be filled by appointment by the Governor pursuant to the provisions of Article V, § 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.

Drafting Note: No change in the law. The first sentence of the second paragraph has been stricken since § 2.1-41.2 requires confirmation of agency heads by the General Assembly.

~~§ 10-31.2~~ 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 ~~such~~ personnel as ~~may be~~ 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 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. ~~Prescribe rules and~~ Promulgate regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter; ~~and~~
5. *Receive, hold in trust and administer any donation made to it for the advancement of forest resources of the Commonwealth; and*
- ~~5.~~ 6. Do all acts necessary or convenient to carry out the purposes of this chapter.

Drafting Note: Proposed subdivision 5 is currently in existing § 10-84.2 pertaining to the powers of the Board of Forestry. This power is consistent with the Department's powers and has therefore been placed in this section. There is no other change in the law.

~~§ 10-84~~ 10.1-1102 . Board of Forestry created .— ~~In the Department of Forestry there shall be a~~ The Board of Forestry within the Department of Forestry , referred to in this chapter as the Board :

The Board , shall be composed of one member from each congressional district appointed by the Governor for a term of four years. 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.

~~§ 10-84.1. Meetings; executive officer.—~~ The Board shall meet at least three times a year for the transaction of business ; ~~but special~~ . *Special* meetings thereof 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.

Drafting Note: Existing §§ 10-84 and 10-84.1 were combined into one section. There was no change in the law.

~~§ 10-84.2~~ 10.1-1103 . Powers of the Board.—The Board shall be charged with matters relating to the management of forest resources in the Commonwealth. ~~It shall have power to receive and hold in trust any donation made to it for the advancement of forest resources of the Commonwealth and to administer the same.~~

The Board shall ~~be required to~~ advise the Governor and the Department on the state of forest resources within the Commonwealth and ~~to provide further advice on~~ the management of forest resources. The Board shall ~~also~~ 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 ~~to~~ shall prepare an annual report on the progress and conditions of state forest work.

Drafting Note: The power to receive donations was placed in proposed § 10.1-1101 pertaining to the powers of the Department. There is no other change in the law.

Article 2.

Duties of the State Forester and General Provisions.

~~§ 10-31.3 10.1-1104 . Powers General powers and duties of State Forester.—The State Forester of the Department of Forestry , under the direction and control of the Governor, shall exercise such the powers and perform such the duties as are conferred or imposed 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. The State Forester, before entering upon the discharge of his duties, shall take an oath that he will faithfully and honestly execute the duties of his office during the continuance therein .~~

Drafting Note: The provision pertaining to the State Forester's oath is being repealed since it duplicates the provisions of § 49-1.

~~§ 10-31.6. Salary and expenses.—The State Forester shall receive such salary as may be provided in accordance with law and shall be paid reasonable traveling and field expenses actually incurred in the performance of his official duties.~~

Drafting Note: This section is being repealed as it is not necessary.

~~§ 10-31.4 10.1-1105 . Additional powers and duties of State Forester .—The State Forester shall have the supervision supervise and direction of direct all forest interests and of all matters pertaining to forestry within the Commonwealth. He shall have charge of all forest wardens and shall appoint, direct and supervise persons whom he deems it necessary to employ employs to perform labor in the forest reservations or the nurseries herein provided for herein . He shall take such action as is authorized by law to prevent and extinguish forest fires; enforce all laws pertaining to forest and woodlands; prosecute any violation of such laws; 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, carry on 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. In addition, the State Forester shall cooperate with counties, municipalities, corporations and individuals in preparing plans for the protection, management and replacement of trees, wood lots and timber tracts under an agreement that the parties obtaining such assistance shall pay the field and traveling expenses of the person employed in preparing such plans.~~

Drafting Note: No change in the law.

~~§ 10-32 10.1-1106 . State Forester to have control of forest reserves and funds; reforestation; 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 of the Department of Forestry .~~

The State Forester shall observe, keep in view, ascertain, follow and put into effect the best methods of reforestation cutover and denuded lands, foresting waste lands, 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 all the watercourses of the Commonwealth.

Drafting Note: No change in the law.

~~§ 10-33 10.1-1107 . State Forester may purchase Purchase of lands and accept acceptance of gifts for forestry purposes by the State Forester ; management ; etc ; definition of state forests .
— (1) Purchases and gifts. - A. The State Forester shall have authority to purchase in the name of the Commonwealth lands suitable for state forests. He may accept gifts of land and money to the Commonwealth for forestry purposes, which gifts must be absolute, except that mineral and mining rights over and under land donated may be reserved by the donors ; and except that the land shall be administered as state forests.~~

~~(2) Acquisition of lands from United States or agency thereof.— B. The State Forester shall also have the power and authority to accept gifts, donations and contributions of land from the United States, or any agency or agent thereof , and to enter into agreements for the acquisition by purchase, lease or otherwise with , the United States, or any agency or agent thereof, for the acquisition by purchase, lease, or otherwise, of such lands for state forests ; and to pledge and apply on the purchase price of any land or lands so acquired not to exceed one-half of the gross proceeds derived from such lands .~~

~~(3) Control of lands and products; rules and regulations. - C. The State Forester shall have authority to provide for the management, development and utilization of any such lands purchased, leased or otherwise acquired, to sell or otherwise dispose of products on or derived from the land, and to enforce such rules and regulations governing state forests, the care and maintenance thereof, and the prevention of trespassing thereon, and such other rules and regulations deemed necessary to carry out the provisions of this section.~~

(4) **Limitation on expenditures.** - *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.

(5) **Portion of proceeds going to counties.** - *E.* One-fourth of the gross proceeds derived from any 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.

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 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.

Drafting Note: Definition of "state forest" added.

§ 10-34. **Attorney General to see that instruments of transfer properly executed, etc.**—The Attorney General is directed to see that all deeds, leases or other instruments of transfer of land or any interest therein to the State for the purposes mentioned in § 10-33 are properly executed before such purchase or lease is completed or such gift is accepted. And he shall see that a good title to the land purchased for forestry purposes is obtained before payment is made of the purchase money.

Drafting Note: Since this responsibility is current law, this section is being repealed as unnecessary.

§ 10-34.1. **Delinquent lands purchased by the Commonwealth.**—When real estate sold for delinquent taxes and purchased by the Commonwealth is not redeemed by the previous owner, his heirs or assigns, or some person having the right to charge the same with a debt, within two years from the date of such purchase, such real estate shall not be subject to further sale if the State Forester files with the clerk of the court in the county wherein it is situated an application for the fee simple title to such real estate and a copy of a report on the same, setting forth his belief that it is chiefly valuable for forestry purposes and his reasons for such belief. Upon receipt of the application and report from the State Forester by the clerk, the same procedure shall be followed as is required under the provisions of Title 58-1 relating to the sale of delinquent lands purchased in the name of the Commonwealth and unredeemed, and after all the necessary action has been taken to protect the interest of the former owner or any person having the right to redeem the land, the clerk shall prepare and deliver to the State Forester a deed conveying the same with special warranty of title.

All lands so conveyed shall be without cost to the Commonwealth except for the usual fees and costs as provided for in such provisions of Title 58-1 and shall be subject to such laws and regulations as are now in effect, or which may be enacted later for the regulation, management, protection and administration of state forests.

After any such lands shall have been so acquired by the Commonwealth, there shall be paid annually by the State Forester to the counties in which such lands may lie, respectively, one-fourth of the gross returns therefrom ; the amounts so paid to such counties to be applied by the several boards of supervisors for such purposes as they may deem most expedient.

Drafting Note: Statutes pertaining to the purchase of delinquent lands are found elsewhere in the Code. This section is unnecessary and is being repealed.

§ 10-34.2 **10.1-1108 . Waste and unappropriated lands.**—Any waste and unappropriated land, other than unappropriated marsh or meadow lands lying on the eastern shore of Virginia ; as exempted from entry and grant by the provisions of § 41.1-4, 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 to be so set apart. With the application 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 and if in the opinion of . *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 State Librarian to prepare preparation of a grant which shall be reviewed for legal sufficiency by the Attorney General for his the Governor's signature and the lesser seal of the Commonwealth.*

All lands so granted shall be subject to such laws statutes and regulations as are now in effect or which may later be enacted for relating to the regulation, management, protection and

administration of state forests.

Drafting Note: References to the Department of General Services were added at that Department's request.

~~§ 10-42 10.1-1109 . Forest reserves State forests not subject to warrant, survey or patent.—When lands have been~~ Lands acquired by the Commonwealth for forestry purposes ; however the same may have been acquired; they shall not thereafter be subject to warrant, survey or patent.

Drafting Note: No change in the law.

~~§ 10-43 10.1-1110 . Violation of rules and regulations for government supervision of state reservations state forests , etc.—Whoever violates Violators of any rule or regulation for the government supervision or use of any state reservation state forest or , park, or road , street or boulevard highway traversing the same, shall after conviction for such offense, be punished by a fine of not less than five dollars, nor more than fifty dollars ; and if the person so fined neglects or refuses to pay the same, he shall be committed to the jail of the county, there to remain until such fine be paid, but not longer than one day for every two dollars of the fine imposed guilty of a Class 4 misdemeanor .~~

Drafting Note: The misdemeanor has been specified as a Class 4. The last amendment to this section was in 1948.

~~§ 10-44 10.1-1111 . Kindling fires on forest reservations state forests ; cutting and removing timber; damaging land or timber.—Any person or persons who shall kindle kindles fire upon any of the forest reservations state forests of this Commonwealth, except in accordance with such rules and regulations as may be prescribed by the State Forester, or who shall cut cuts and remove removes any timber whatever , or who shall do or cause to be done any act that will damage damages or causes the damage of forest land or timber belonging to the Commonwealth, shall be guilty of a Class 3 misdemeanor ; and, upon conviction, be subject to a penalty not exceeding \$500 for each offense committed ; with cost of suit. If the defendant or defendants neglect or refuse to pay the penalty and costs imposed, he or they shall be committed to the jail of the county, until such penalty and costs are paid, but no longer than one day for every two dollars of the fine and costs imposed.~~

Drafting Note: The misdemeanor has been specified as a Class 3.

~~§ 10-31.5 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 and , to the forest fire laws, and to trespass laws and their penalties, which notices shall be distributed by the State Forester 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 shall be are posted, who shall tear tears down, mutilate mutilates or deface defaces any such notice shall be guilty of a Class 4 misdemeanor and punished ; upon conviction, by a fine of ten dollars for each offense.~~

Drafting Note: The misdemeanor has been designated as a Class 4.

~~§ 10-31.7 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 ; on account of for lawful acts done in legal performance of their his duties.~~

Drafting Note: No change in the law.

~~§ 10-35 . Employment of engineer and surveyor.—The State Forester shall have power to employ a civil engineer and surveyor from time to time, with his necessary assistants, whenever the necessities of the case may require.~~

Drafting Note: This section is being repealed as unnecessary.

~~§ 10-36 10.1-1114 . Establishment of nurseries; distribution of seeds and seedlings.—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 forest reservations state forests or other public grounds or parks. Seeds and seedlings may also be distributed to landowners and citizens of the Commonwealth under and subject to such rules and pursuant to Board regulations as may be established by the Board .~~

Drafting Note: No change in the law.

~~§ 10-37 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 \$10,000, 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; ~~but the~~. 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 (5) E of § ~~10-33~~ 10.1-1107, shall be paid into the state treasury as provided in § 10.1-1118, and shall be held as a ~~special fund in the Reforestation Operations Fund~~ for the improvement or protection of state forests or for the purchase of additional lands; ~~and shall be paid out in like manner as money appropriated for the use of the Department.~~

Drafting Note: No change in the law.

§ ~~10-30~~ 10.1-1116. Forest Reserve Reforestation Operations Fund.—All money obtained from the state forestry reserves state forests, except as provided in subsection (5) E of § ~~10-33~~ 10.1-1107, shall be paid into the state treasury, to the credit of the Forest Reserve Reforestation Operations Fund; ~~which fund is hereby created; and the~~. The moneys in such fund are hereby appropriated to be utilized for purposes of state forest protection, management, replacement, and extension, under the direction of the State Forester.

Drafting Note: No change in the law.

§ ~~10-54.1~~ 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 above described shall be deposited in the state treasury to the credit of the Department Forestry Operations Fund, to be used in the further protection and development of the forest resources of this Commonwealth. The Upon presentation of a statement, the landowner, county, municipality or state agency receiving such services or rentals; upon presentation of a statement, shall pay to the State Forester, within thirty days, the amount of charge shown on the statement.

Drafting Note: No change in the law.

§ ~~10-40~~ 10.1-1118. Account of receipts and disbursements; report to General Assembly.—The State Forester shall keep a full and accurate account of the receipts and expenditures of the Department, and he shall make a full and accurate and complete report to each session of the General Assembly, showing in detail the receipts from all sources and the expenditures and the purposes for which expenditures have been made.

Drafting Note: No change in the law.

§ ~~10-41~~ 10.1-1119. Preservation of evidence as to conserving forest supply; reports to General Assembly; publications.—The State Forester shall preserve all evidence which may be taken by himself him with reference to conserving the forest supply forests of the Commonwealth and the methods best adapted to accomplish such object; and shall make. He shall report of their doings, his actions, conclusions and recommendations to each session of the General Assembly; and; from time to time; publish; in a popular manner, and print for public distribution, in bulletin or other form, such conclusions and recommendations as may be of immediate public interest.

Drafting Note: No change in the law.

§ 10-45. Jurisdiction of judges of general district courts in enforcement of fines and penalties; bail; commitment.—The judge of a general district court of the jurisdiction wherein the offense has been committed, shall hear and determine all prosecutions for the purpose of enforcing fines and penalties collectible under the provisions of this chapter for a Class 2, 3, or 4 misdemeanor, and of holding the offender, under proper bail if necessary, for hearing before the general district court; and committing him to jail until hearing, if the required bail is not furnished. It shall be the duty of the Commonwealth's attorneys of the several counties or cities to prosecute all violators of this chapter.

Drafting Note: This section is being repealed as it is unnecessary since the provisions of the statute are general law.

Article 3.

Forest Management of State-Owned Lands Fund.

§ ~~10-45.1~~ 10.1-1120. Forest Management of State-owned Owned Lands Fund established.—There is hereby established the The Forest Management of State-owned Owned Lands Fund established by the legislature in 1980 is continued.

Drafting Note: No change in the law.

~~§ 10-45.2~~ 10.1-1121 . Definitions.— For the purposes of As used in this article ; the following words or phrases shall have the meanings respectively ascribed to them, unless the context clearly requires otherwise a different meaning :

1. "Department" shall mean the Department of Forestry.

2. "Fund" shall ~~mean~~ means the Forest Management of State- ~~owned~~ Owned Lands Fund.

3. "State-owned lands" shall ~~mean~~ means forest land owned or managed by the various departments, agencies and institutions of the Commonwealth and which are designated by the Department ; as defined herein, 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 ~~Commission~~ Department of Game and Inland Fisheries, the Department of Forestry, or the Department of Conservation and Historic Resources.

Drafting Note: No change in the law. Department was defined in proposed § 10.1-1100 for the entire chapter.

~~§ 10-45.3~~ 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 with the assistance of affected state agencies, departments and institutions 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~~ 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 which is gift property specified in subsection C of § 2.1-512 of this Code, the Department shall deposit in the ~~fund~~ 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.

Drafting Note: No change in the law.

~~§ 10-45.4~~ 10.1-1123 . Use of ~~fund~~ Fund ; management, receipt and expenditure of moneys.— The ~~fund~~ Fund shall be used to defray the costs of such timber sales, to develop forest management plans for state-owned lands pursuant to ~~§ 10-45.3~~ 10.1-1124 of this Code , and to implement those plans. The Department shall have the authority to manage, receive and expend moneys for and from the ~~fund~~ Fund for these purposes.

Drafting Note: No change in the law.

Article 4.

Forest Protection for Cities and Counties.

~~§ 10-46~~ 10.1-1124 . Counties and certain cities to pay ~~monthly~~ annual sums for forest protection, etc.— ~~(a) Each~~ 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 ~~§ 10-46.1~~ 10.1-1125 to provide forest fire prevention, upon presentation to its governing body of an itemized statement duly certified by the State Forester shall repay into the state treasury ~~monthly~~ annually any amounts expended in the preceding month year by the State Forester in such county or city for forest protection, forest fire detection, forest fire prevention and forest fire suppression, not exceeding to exceed in any one year an amount measured by the acreage, computed upon the basis of three cents per acre, such amount to be increased to five cents per acre on and after July 1, 1986, of privately owned forests in the county or city, according to the most recent United States Forest Survey of 1940 subject to additions and deductions of acreage since the making of this 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 or until it has been cleared or improved for other use. Open land shall be considered as forest land when it bears at least eighty well-distributed seedlings or sprouts of woody species per acre. The amounts so repaid by the counties or cities into the state treasury from time to time shall be credited to a special fund 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 § ~~10-46.1~~ 10.1-1125 .

(b) 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 ~~and informal~~ proceeding ; ~~in term or vacation~~ , and the decision of the judge certified to the governing body and to the State Forester, respectively, shall be conclusive and final.

Drafting Note: Payments are currently being made annually, not monthly. The section has been amended to reflect this.

§ ~~10-46.1~~ 10.1-1125 . Application of Articles ~~2, 3 4, 5 and 4 6~~ to cities; State Forester authorized to enter into contracts with cities.— (a) A. In addition to the application of *this article* and Articles 2 (§ ~~10-46~~ et seq.), 3 (§ ~~10-51~~ et seq.) and 4 (§ ~~10-55~~ et seq.) 5 (§ 10.1-1131 et seq.) and 6 (§ 10.1-1135 et seq.) to forest lands lying in counties, such articles shall also apply to forest lands 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 ~~land~~ is specifically included in the provisions of the contract with the city.

(b) 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 forest land is located. ~~Any such~~ The contract ; ~~among other matters~~, shall include provisions for the State Forester to furnish forest fire protection, prevention, detection, and suppression services ~~together with enforcement of those provisions of~~ and to enforce state law applicable to forest fires on forest lands 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.

Drafting Note: No change in the law.

§ ~~10-46.2~~ 10.1-1126 . State Forester authorized to enter into ~~contracts agreements~~ with federal agencies.—The State Forester is authorized to enter into ~~contracts 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 ~~contract, among other matters, agreement~~ may include provisions for the State Forester to furnish forest fire protection, prevention, detection, and suppression services together with enforcement of ~~those provisions of~~ state law applicable to forest fires on forest lands within such county, city or town. Costs of such services provided by the State Forester shall be reimbursed to ~~the State Forester him~~ as provided in ~~said contract the agreement~~ . 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, cities and towns generally.

Drafting Note: "Contracts" changed to "agreements" to reflect current procedure. No other change in the law.

§ ~~10-47~~ 10.1-1127 . County and city levies and appropriations.—The governing bodies of the ~~several~~ counties and those cities entering into a contract as provided in § ~~10-46.1~~ 10.1-1125 of this State are authorized to levy taxes and appropriate money for ~~purposes of~~ forest protection, improvement and management.

Drafting Note: No change in the law.

§ ~~10-48~~ 10.1-1128 . Acquisition and administration.—Each of the ~~several counties, cities and towns in this Commonwealth, county, city and town~~ acting through its governing body, is authorized to acquire by purchase, gift or bequest ~~such~~ tracts of land suitable for the growth of trees as may be available and as ~~such governing body may deem it wise to acquire, and to administer the same, as well as any lands now owned by any such county, city or town~~ *locality* and suitable for the growth of trees, as county, city or town forests.

Drafting Note: No change in the law.

§ ~~10-49~~ 10.1-1129 . Purchasing real estate outside of boundaries.—Before any ~~such~~ governing body ~~shall acquire by purchase~~ purchases any real estate outside of the county, city or town which it represents ~~under pursuant to~~ the provisions of § ~~10-48~~ 10.1-1128 , it shall first secure the approval of the governing body of the county, city or town in which ~~such~~ *the* real estate is located.

Drafting Note: No change in the law.

~~§ 10-50~~ 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 ~~such~~ forest tree seedlings and transplants as may be 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 ~~§ 10-48~~ 10.1-1128 , and to furnish ~~such~~ technical assistance and supervision as he may deem necessary for the proper management and administration of such lands and forests ~~thereon~~, free of cost to the counties, cities and towns ; ~~provided, that the~~ . 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 .

Drafting Note: No change in the law.

Article 5.

Forestry Services for Landowners.

~~§ 10-51~~ 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 ~~same~~ trees under the terms and conditions hereinafter provided.

Drafting Note: No change in the law.

~~§ 10-52~~ 10.1-1132 . Administration by State Forester; services rendered.—~~The administration of State Forester shall administer~~ the provisions of this article shall be by the State Forester . 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.

Drafting Note: No change in the law.

~~§ 10-53~~ 10.1-1133 . Fees for services; free services.— ~~For such~~ Upon presentation of a statement for designating, measuring or estimating services mentioned specified in ~~§ 10-52~~ 10.1-1132 , the landowner or his agent ; upon presentation of a statement, 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 and , measured or estimated. However, for the purpose of further encouraging the use of approved scientific forestry principles on the private forest lands of this State Commonwealth , and to permit explanation of the application of such principles, the State Forester may, where he deems it advisable, designate and , measure or estimate without charge the trees of a forest landowner on an area not in excess of ten acres.

Drafting Note: No change in the law.

~~§ 10-54~~ 10.1-1134 . Disposition of fees.—All moneys paid to the State Forester for services ~~above~~ described in this article shall be deposited in the state treasury to the credit of the ~~Department~~ Forestry Operations Fund , to be used in rendering 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.

Drafting Note: No change in the law.

Article 6.

Forest Wardens and Fires.

~~§ 10-55~~ 10.1-1135 . Appointment and compensation of forest wardens; oath; powers.—Whenever the State Forester considers it necessary, he may apply to the Governor to ~~commission such persons as the~~ The State Forester , when he deems it necessary, may designate 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 ~~such~~ compensation as may be provided in accordance with law for the purpose. ~~Forest wardens thus appointed shall, before~~ 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 ; ~~after which they shall, while~~ . While holding such office ; possess and exercise all the authority and power held and exercised by constables at common law and by arresting officers under the statutes of the Commonwealth, so far as arresting and prosecuting persons for violations of any

of the forest fire laws or of any of the laws or rules or regulations enacted or made, or to be enacted or made, for the protection of the forests of the Commonwealth or other forest lands, or for the protection of the fish and game contained in the forests of the Commonwealth ; are concerned forest wardens shall be conservators of the peace .

The State Forester may designate certain forest wardens to be special forest wardens. Such special *Special* forest wardens so designated shall have the same authority and power as sheriffs throughout the Commonwealth to enforce the forest laws and may serve original process and mesne process in all matters arising from violation of such forest laws .

Drafting Note: Language at the end of the first and second paragraphs stricken at the direction of the Virginia Code Commission.

§ 10-56 10.1-1136 . Duties of forest wardens.—The duties of the forest wardens are to (i) enforce all forest and forest fire laws, rules 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 the provisions of 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.

Drafting Note: No change in the law.

§ 10-57 10.1-1137 . Duty in case of fires and payment of costs of suppression.—When any forest warden sees or there is reported to him receives a report of a forest fire, he shall repair 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 thus incurred and immediately send the account verified by affidavit to the State Forester for examination .

Upon approval by the State Forester the account shall be paid from the Commonwealth's fund provided for protection of forests *Forestry Operations Fund* . Any person having a claim for compensation may avail himself of the ordinary process of law in a proceeding in the county or city in which the services were rendered against the Commonwealth, in which the State Forester shall be made a party.

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.

Drafting Note: No change in the law. Stricken provision in the second paragraph is general law.

§ 10-57-1 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 *unknown* , to offer a monetary reward to any person or persons for information sufficient to procure conviction in a court of appropriate jurisdiction of the person or persons responsible for such fire in a court of appropriate jurisdiction . 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.

Drafting Note: No change in the law.

§ 10-59 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 which may burn in any county or city of the Commonwealth which is organized for forest fire control under the direction of the State Forester. Any person so summoned by a forest warden to fight a forest fire shall be paid for such service at such the rate of pay as is provided for in the state forest service *Department of Forestry* wage scale for fire fighting in effect in the county or city, or part thereof, in which the fire is fought. Provided that such warden Wardens shall not summon for such service any person while engaged in the duties of maintaining the rights-of-way of railroads in a safe condition for the safe passage of trains, nor any station agent, operator or other person while engaged in duties necessary for the safe operation of such trains.

Any person so summoned who ~~shall fail or refuse~~ fails or refuses to assist in fighting such the fire, unless ~~such~~ the failure is due to physical inability or other good and valid reason, shall be guilty of a Class 4 misdemeanor.

Drafting Note: This section may not be necessary. There may be opposition to the removal of this section. The Code Commission decided to retain this section.

§ 10-60 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.

Drafting Note: No change in the law.

§ 10-61 10.1-1141 . Liability for escaped and recovery of cost of fighting forest fires.— Any The State Forester in the name of the Commonwealth shall collect the costs of fire fighting performed under the direction of a forest warden in accordance with § 10.1-1139 from any person who , directly or indirectly, negligently ; carelessly, or intentionally without using reasonable care and precaution to prevent its escape, starts a fire which burns on any forest land, brushland , grassland or field containing dry grass or other inflammable material, wasteland. Such person shall be liable for the full amount of all expenses incurred ; both by the county or city and by the Commonwealth, for fighting or extinguishing such fire ; all of which shall be recoverable by action brought by the State Forester in the name of the Commonwealth . All expenses collected shall be credited to the Forestry Operations Fund. It shall be the duty of the Commonwealth's attorneys of the several counties or cities to institute and prosecute proper proceedings under this section, at the instance of the State Forester.

The provisions of this section shall cover every manner or way in which forest land or brushland or wasteland fires may be started, whether by direct act, or by an appliance or by indirection.

The term "person" as used in this section shall include individuals, associations, partnerships ; joint stock companies and corporations ; and their officers, servants, agents and employees . Every county or city in which a fire has occurred for the suppression of which any costs are collected costs to suppress a fire pursuant to this section shall be reimbursed by that proportion of any amount so collected which the cost incurred by such county or city in the suppression of such fire bears to the entire cost of its suppression.

§ 10-58. Recovery of costs of fire fighting.—Whenever possible the State Forester shall collect the costs of fire fighting done under the direction of a forest warden in accordance with the provisions of § 10-57 and approved as provided in that section, from the person responsible for the origin of the fire by his negligence or intent, and shall return any costs so collected to the state treasury for credit to the special fund hereby provided for, and such amounts shall be repaid to the county or city in which the costs were incurred, but not exceeding the payments made by that county or city in the fiscal year in which such costs were accrued ; and the attorney for the Commonwealth of the county or city in which the fire occurred shall institute and prosecute the necessary proceedings.

The State Forester may institute an action and recover from either one or both parents of any minor under the age of eighteen years , 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 \$500 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.

Drafting Note: Existing §§ 10-58 and 10-61 were merged into one section. The second paragraph of existing § 10-61, which appears to be inconsistent with the first paragraph, has been stricken. The word "carelessly" in § 10-61 was stricken at the direction of the Code Commission.

§ 10-61.1. Liability for fires originating from construction, etc., of electric transmission line or of right-of-way.—Whenever it is established that a forest, brush or grass fire originated from the negligent construction, maintenance or operation of an electric transmission line or of the right-of-way, the owner of the line shall pay to the Commonwealth and the county or city in which such fire occurred all expenses incurred by them in suppressing the fire. Such fire suppression expenses shall be recoverable by action at law brought by the State Forester in the name of the Commonwealth on behalf of the Commonwealth and on behalf of the board of supervisors of the county or counties or on behalf of the council of any city or cities in which the fire burned.

It shall be the duty of the Commonwealth's attorneys of the several counties and cities to institute and prosecute proper proceedings under this section at the request of the State Forester.

Drafting Note: Duplicates provisions of proposed § 10.1-1141. Existing § 10-61.1 will be

repealed as unnecessary.

~~§ 10-62 10.1-1142 . Regulating the burning of woods, brush, etc.; penalties.— (a) 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) B. During the period beginning March 1 and ending May 15 of each year, even though the precautions required by the foregoing ~~paragraph~~ 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 ² 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.~~

~~(c) The provisions of subsection (b) of this section subsection shall not apply to any fires which may be set on rights-of-way of railroad companies by their ~~duly~~ authorized employees.~~

~~C. 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.~~

~~(d) D. Any person violating any provisions of this section shall be guilty of a Class 4 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 and to each county or city which enters into a contract as provided in § 10-46.1 for the full amount of all expenses incurred by the Commonwealth and the county or city respectively in suppressing such fire ; such . Such amounts to shall be recoverable by action brought by the State Forester in the name of the Commonwealth on behalf of the Commonwealth and by the board of supervisors on behalf of the county or by the council on behalf of the city credited to the Forestry Operations Fund .~~

~~Subsection (b) of this section shall not become effective in any county or city of the Commonwealth until it has been approved by a majority vote of the governing body of such county or city.~~

~~§ 10-63. Failure to extinguish fires built in open.—Whoever builds a fire in the open air, or uses a fire built by another in the open air within 150' of any woodland, brushland or field containing dry grass or other inflammable material, shall ; before leaving such fire unattended, totally extinguish it : Any person failing to do so shall be guilty of a Class 4 misdemeanor. Whenever it is established that a forest fire originated from such fire, the person building or using such fire shall, in addition to the above penalty, be liable for the full amount of all costs incurred in suppressing the fire.~~

~~Drafting Note: Existing §§ 10-62 and 10-63 were merged into one section. The provisions of existing § 10-63 are found in proposed subsection C. The penalty was raised from a Class 4 misdemeanor to a Class 3.~~

~~§ 10-64.1 10.1-1143 . Throwing inflammatory 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 forest land, 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.~~

~~Drafting Note: No change in the law.~~

~~§ 10-64 10.1-1144 . Failure to clean premises of certain mills.—Any individual, firm, or corporation responsible for the operation ; in, through or near forest or brushland, 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 and . *The premises shall also be cleaned* for a distance of 100 ² 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 ~~such person, firm, or corporation removes such mill ; or is removed or ceases to operate it~~ for a period of ten consecutive days, ~~he any fire which may be burning in any sawdust pile, slab pile or other debris shall be totally extinguish any fire which may be burning in any sawdust pile, slab pile or other debris which may have accumulated from the operation of such mill, extinguished~~ unless the owner of the land on which such fire is located ; ~~assume 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.

Drafting Note: No change in the law.

§ ~~10-65~~ 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.

Drafting Note: No change in the law.

§ ~~56-426.1~~ 10.1-1146 . Manner in which right-of-way shall be kept.—A. Every railroad operating in Virginia shall clear its right-of-way of weeds, grass, and decayed timber, ~~which from their nature and condition are~~ and other combustible materials, or construct appropriate fire breaks, in accordance with this section and with the designation and notice of the Department of Forestry.

B. The State Forester ; ~~of the Department of Forestry,~~ shall determine by inspection which portions of the rights-of-way of railroad companies operating in Virginia, by reason of the presence of such combustible materials, pose a material threat that fires originating thereon will spread to adjacent forest land. ~~Such sections~~ Sections to be cleared shall be designated by mileposts. In making the designations ~~required by this section~~ , consideration shall be given by the State Forester to maintaining ground cover for the stability of cuts and fills and for the prevention of erosion.

C. ~~The Virginia Department of Forestry shall enforce this statute.~~

D C . No later than October 1 of each year, the Department ~~of Forestry~~ shall notify each railroad company operating in Virginia of the portions of its right-of-way which have been designated for clearance. This notice shall prescribe a reasonable time, but no later than March 1 of the following year, within which such clearance is to be completed and shall specify the extent of the right-of-way to be cleared. The State Forester, in his discretion, may permit the construction of a fire break in lieu of clearance where, in the opinion of the State Forester, a fire break would provide a satisfactory level of protection.

E. The State Forester may extend the completion time by a reasonable period when completion within the time initially specified is prevented by weather, strikes, or act of God.

F D . Any railroad company aggrieved by a determination made by the State Forester as to which sections shall be cleared may appeal that determination to the circuit court of the county or city in which the designated right-of-way or any part thereof is located, on the grounds that the determination is unreasonable or arbitrary, or that it is inconsistent with the ~~provisions of this article law~~ . However, no such appeal shall delay or stay the railroad of its obligation to clear any portion of its right-of-way designated for clearance by the State Forester, unless the court so orders.

G E . Nothing in this section shall affect any liability of a railroad company for damages or suppression costs arising from fire originating on the railroad's right-of-way. *Liability for damage from a fire occasioned by the engine or train of any railroad company shall be determined pursuant to § 56-428.*

H F . The Department of Forestry shall enforce this statute through a civil action for injunctive relief in any circuit court of competent jurisdiction.

Drafting Note: Relocated from Title 56 at the request of the State Forester. There is no change in the law. Stricken subsection C duplicates the provisions of proposed subsection F.

§ ~~10-66~~ 10.1-1147 . ~~How railroads may remove~~ *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 ~~steam~~ 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 ~~thereof~~ 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 ~~shall~~ *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 ~~carrying out~~ *administration* of this section.

~~Nothing contained in~~ *The provisions of* this section shall *not* apply to temporary ~~steam~~ tram roads used for hauling logs and lumber.

Drafting Note: No change in the law.

§ ~~10-67~~ 10.1-1148 . Fires caused by violation of provisions of article; liability to State Commonwealth ; ~~city or county~~ .— All ~~individuals~~ *Individuals* and corporations causing fires by violation of any of the ~~provisions~~ *provision* of this article shall be liable to the State Commonwealth ; ~~county or city in which the fire occurred~~ ; for (i) all damages the State Commonwealth , ~~county or city may sustain~~ *sustained* by such fire or fires, and ; ~~in addition thereto, to~~ (ii) the full amount of all expenses incurred by the State Commonwealth , ~~county or city~~ in fighting or extinguishing such fire.

Drafting Note: References to localities removed.

§ ~~27-5-2~~ § 10.1-1149 . Southeastern Interstate Forest Fire Protection Compact.—Chapter 63 of the 1956 Acts of 1956 Assembly ; ~~approved February 17, 1956~~, authorizing the Governor to execute a ~~certain~~ compact to promote effective prevention and control of forest fires in the Southeastern region of the United States, is incorporated in this Code by this reference.

Drafting Note: Relocated from Title 27.

§ ~~27-5-4~~ § 10.1-1150 . Middle Atlantic Interstate Forest Fire Protection Compact.—Chapter 6 of the 1966 Acts of 1966 Assembly ; ~~approved February 14, 1966~~, authorizing the Governor to execute a ~~certain~~ compact to promote effective prevention and control of forest fires in the Middle Atlantic region of the United States, is incorporated in this Code by this reference.

Drafting Note: Relocated from Title 27.

Article 7.

Hunting and Trapping in State Forests.

§ ~~10-68~~ 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 ~~which~~ are administered as state forests, without first obtaining, in addition to ~~such~~ other licenses and permits as are required by law, ~~such~~ special use permits as ~~may be~~ required by the State Forester pursuant to ~~the provisions of~~ this article.

Drafting Note: No change in the law.

§ ~~10-69~~ 10.1-1152 . State Forester may require permits and fees.—The State Forester is authorized, with the approval of the Board, to require any person who ~~shall enter upon, occupy, or use, for the purpose of hunting or trapping~~ *hunts or traps* on any of the lands described in § ~~10-68~~ 10.1-1151 to obtain a special use permit or special use permits. Permits to ~~enter upon, occupy, or use~~ *hunt* on any of such lands ~~for the purpose of hunting~~ shall be issued for ~~such~~ a fee, not to exceed five dollars annually for each permit, as ~~shall be~~ fixed by the State Forester. Permits to ~~enter upon, occupy, or use any of~~ *trap* on such lands ~~for the purpose of trapping~~ may be issued in combination with the hunting permits, or separately, at a fee not to exceed

five dollars annually for each such permit, to be fixed by the State Forester.

Drafting Note: No change in the law.

~~§ 10-70 10.1-1153 .~~ Limitations on rights of holders of permits.—Each ~~such~~ *special use* permit shall entitle the holder ~~thereof~~ to hunt and trap, or to trap, as the case may be, 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 Commissioner of Game and Inland Fisheries 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. ~~For such purpose~~ *In addition to the other provisions of law applicable to hunting and trapping on the lands of the Commonwealth,* the State Forester is ~~further~~ authorized to impose such restrictions and conditions upon hunting and trapping in the state forests ; ~~in addition to the other provisions of law applicable to hunting and trapping on the lands of this Commonwealth,~~ as the State Forester ~~may deem~~ *he deems* proper ; ~~but no~~ . No such restriction or condition shall be effective as to any person to whom a permit is issued as provided in this article for the permit holder unless ~~such~~ *the* restriction or condition is written, printed, stamped or otherwise indicated on the permit.

Drafting Note: No change in the law.

~~§ 10-71 10.1-1154 .~~ Issuance of permits and collection of fees; form of permit.— ~~The several clerks~~ Clerks or other persons authorized to sell hunting and trapping permits of the circuit courts of the counties wherein ~~such~~ state forests are located shall issue ~~such~~ *the special use* permits and collect the *applicable* fees ~~charged therefor~~ . Each permit shall bear a serial number and shall be in ~~such~~ *the* form as *prescribed* by the State Forester ~~shall prescribe~~ . All necessary *special use* permits or permit blanks shall be furnished to the clerks or other person authorized to sell permits by the State Forester. For his services each ~~such~~ clerk or other person shall be entitled to receive twenty-five cents for each ~~such~~ permit issued.

Drafting Note: No change in the law.

~~§ 10-72 10.1-1155 .~~ Collections to be paid into state treasury; reports to State Forester.—Each ~~such~~ clerk or other authorized person ~~above mentioned in § 10.1-1154~~ shall pay into the state treasury the gross amount received by him from the sale of ~~such~~ *special use* permits, as follows: (i) for July, August and September, quarterly, not later than October 5; (ii) for October, November and December, quarterly, not later than January 5; (iii) for January, February and March, quarterly, not later than April 5; and (iv) for April, May and June, quarterly, not later than July 5.

At the time of ~~making~~ each ~~such~~ remittance the clerk or other authorized person shall ~~make~~ a report to the State Forester on forms prescribed and provided by him, ~~whereon he shall show~~ *showing* the serial numbers and quantity of permit forms received, sold, and on hand unsold, and the amount of gross collections remitted for the quarter. A duplicate copy of the report shall be forwarded, together with the remittance, to the Comptroller.

Drafting Note: No change in the law.

~~§ 10-73 10.1-1156 .~~ Funds credited to Department; disbursements.—All funds paid into the state treasury ; ~~as provided in pursuant to § 10-72 10.1-1155~~ , shall be credited to the Department and maintained in a ~~special account~~ *the Reforestation Operations Fund* to be expended annually, in the following order:

(1) 1. One-fourth of the gross revenue so derived shall be paid into the treasuries of the ~~several~~ counties wherein ~~such~~ state forests are located proportionately according to the revenue derived from the sale of ~~such~~ *special* permits in each respective county, which shall be credited to the general fund of such county;

(2) 2. From the balance remaining after providing for such payments to ~~such~~ *the* counties, there shall be paid the costs of preparing and issuing the permits, including the compensation of the clerks or other persons authorized to sell hunting and trapping permits;

(3) 3. The remainder may be expended by the State Forester for game and forest management in such state forests. All funds expended by the State Forester in the development, management, and protection of the game resources in ~~such~~ state forests shall be in cooperation with and under the direction of the ~~Commission~~ *Department* of Game and Inland Fisheries.

All moneys paid into ~~such~~ *special* account are hereby appropriated to the Department for the purpose hereinabove set forth. All disbursements therefrom shall be made by the State Treasurer on warrants of the Comptroller issued upon vouchers signed by the State Forester or by ~~such~~ other person or persons as may be designated for the purpose by him.

Drafting Note: No change in the law. The stricken paragraph at the end of the section is

general law.

~~§ 10-74 10.1-1157~~ . Punishment for violations.—Any person who ~~shall hunt hunts or trap traps~~ on any of the lands described in § 10-68 in violation of any provision of this article, or in violation of such restrictions and conditions as may be imposed by the State Forester pursuant to the provisions of § ~~10-70 10.1-1153~~ shall be deemed guilty of a Class 1 misdemeanor and upon conviction shall be punished accordingly.

Drafting Note: Classification of misdemeanor added.

Article 8.

Fire Hazards and Closing of Hunting and Fishing

Seasons in Forestlands.

~~§ 27-54.5 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 or parched as to create a serious fire hazard endangering lives and property, for any persons to do any open burning nearer than 300 ² 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 apply thereto *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 ~~article~~ section .

Any person violating the provisions of this ~~article~~ section shall be guilty of a Class 3 misdemeanor for each separate offense.

Drafting Note: This article has been relocated to Title 10 from Title 27 at the suggestion of the State Forester.

~~§ 27-54.1 10.1-1159~~ . ~~Certain~~ Upon proclamation of Governor certain acts made unlawful where extraordinary fire hazards exist; closing of hunting and fishing seasons ; ~~proclamations of Governor~~ . — ~~It~~ 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 or parched 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 ² 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 ² feet from the mainland shore and reached by a boat, when ~~said~~ the boat embarks from and lands at an established boat landing landings , and at no other time touches shore nearer than 300 ² feet from any forestlands, brushlands, or fields containing inflammable vegetation or marshland adjoining such forestlands, brushlands or fields except at an established boat landing areas .

This article shall not be effective until the Governor, upon recommendation of the State Forester, proclaims such a condition to exist in the Commonwealth or any part thereof and it shall apply 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.

§ 27-54.4. Penalty for violation.— Any person violating the provisions of this ~~article~~ section shall be guilty of a Class 2 misdemeanor for each separate offense.

Drafting Note: Existing § 27-54.4 was consolidated into this section.

§ 27-54.2 10.1-1160 . Effect of proclamation on hunting season.—When any such proclamation shall be 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 shall occur while such proclamation is effective, said 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 said the season ; and if . If the season is not open, it may open beginning on the first legal hunting day after such proclamation be is rescinded and remain open for a period not exceeding the prescribed length of said the season.

Drafting Note: No change in the law.

§ 27-54.3 10.1-1161 . Notice of issuance, amendment or rescission of proclamation.—When any such 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 and the . In addition, the Secretary may , in his discretion , give such additional notice as he may deem deems necessary.

Drafting Note: No change in the law.

Dogwood Trees.

§ 10-82.1. Restrictions on acquisition for manufacturing purposes or advertising therefor.—It shall be unlawful for any person, for himself or as agent, factor or employee, to purchase or otherwise acquire, or to advertise for the purchase or acquisition of, unless the advertisement clearly specifies that the purchase will be limited to dogwood which measures more than six inches in diameter at ground level, for manufacturing purposes any dogwood, (Cornus florida) which has been cut from any tree having a diameter at ground level of less than six inches. This prohibition shall not apply to any newspaper or other publication which accepts and publishes the advertisement offered by the person, firm or corporation advertising for the purchase of dogwood.

§ 10-82.2. Distribution, posting and publishing of notices.—The State Forester shall distribute notices calling attention to the provisions of this article to forest wardens for posting in conspicuous places in all counties and may cause such notices to be published in newspapers of general circulation in counties.

§ 10-82.3. Violations and penalties.—Any person purchasing or otherwise acquiring any dogwood in violation of any provision of this article shall be guilty of a misdemeanor, and shall upon conviction, forfeit to the Commonwealth the sum of ten dollars for each such dogwood tree purchased or otherwise acquired in violation of the provisions of § 10-82.1 above. Any person advertising for the purchase or acquisition of dogwood in violation of the provisions of this article shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed \$100. Any person may enter a complaint as to alleged violation of the provisions of this article, before the trial justice of the county in which the offense was committed.

Drafting Note: This article on Dogwood Trees is being repealed at the suggestion of the Department of Forestry.

Article 9.

Seed Trees.

§ 10-74.1. Declaration of policy as to perpetuation of forest resources.—The preservation of the forests and the conservation of the forest resources for the equal and guaranteed use of present and future generations, and the protection and perpetuation of forest resources by means of continuous growth of timber on lands suitable therefor, are declared to be the public policy of the Commonwealth of Virginia. In declaring this policy it is recognized that continuous timber growth of commercially valuable species is in the public interest, and can be attained to a considerable degree by prescribing certain rules of forest practice to be observed in the growing and harvesting of timber.

Drafting Note: This section is unnecessary and is being repealed.

§ 10-75 10.1-1162 . Definitions.— For the purpose of As used in this article unless the context requires a different meaning :

“Tree” means any tree of a currently commercially valuable species which is six inches or more in diameter; and

“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 ; and .

"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.

Drafting Note: Terms arranged in alphabetical order. No change in the law.

~~§ 10-74.2. Exemptions from article.—The provisions of this article requiring the leaving of pond pine or white pine or tulip poplar seed trees on an acre or acres shall not apply to timber cutting rights acquired prior to July 1, 1956; provided further that the provisions of this article shall not apply in those counties in which this article is not effective on June 30, 1956, to loblolly, shortleaf, pond or white pine or tulip poplar cutting rights acquired prior to July 1, 1956.~~

Drafting Note: This section appears to be obsolete and is being repealed.

~~§ 10-81 10.1-1163 . When article not applicable in general 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 as many as 400 or more loblolly, shortleaf, or pond or white pine or tulip poplar seedlings, singly or together, 4 1/2 feet or more in height.~~

~~§ 10-82. Land cleared for agricultural, pasture or subdivision purposes.—Nothing contained in this B. This article shall not apply to any landowner or 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 shall 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 ; and in . In the case of clearing for building sites that evidence of intent shall be the construction of dwellings or other bona fide structure shall be in progress or completed within two years from the date of completion of commercial cutting.~~

~~§ 10-83. Land under planting, cutting or management plan.— C. 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 procure the reproduction of and maintain the growth of young thrifty trees of commercially valuable species, 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 ; provided, that if . If such plan has been submitted to the State Forester by registered or certified mail and he has not approved the same plan , or disapproved it with a statement in writing of his reasons therefor, within a period of sixty days from the date of submission, such the plan shall be deemed approved and shall be effective for the purposes of this section ; nor shall the .~~

~~The provisions of this article which required the leaving of pine seed trees on acres where less than fifty percent of the trees are loblolly or shortleaf pine, singly or together, apply to timber cutting rights acquired prior to July 1, 1950.~~

Drafting Note: Existing §§ 10-81, 10-82 and 10-83, pertaining to exemptions, have been merged into one section. The last paragraph of existing § 10-83 appears to be obsolete and is being repealed.

~~§ 10-81.1. Article effective in all counties, cities and towns.— The provisions of this article shall be effective in every county, city or town in this State.~~

Drafting Note: This section is being repealed as it appears to be unnecessary.

~~§ 10-76 10.1-1164 . Pine trees to be left uncut for reseeding purposes.—Every landowner who cuts, or any person who is responsible for cutting, or actually cuts ; or any person who 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 one acre or more of land on any acre on which loblolly pine (*Pinus taeda*) , shortleaf pine (*Pinus echinata*) , pond pine (*Pinus serotina*), or white pine (*Pinus strobus*) , singly or together, occur and constitute ten percent or more of the live trees on each acre or acres, shall ; unless there is in effect for such acre or acres a planting, cutting, or management plan as provided in § 10-83, reserve and leave uncut and uninjured not less than eight cone-bearing loblolly, shortleaf, pond or white pine trees~~

fourteen inches or larger in diameter on each acre thus cut and upon each acre on which loblolly, shortleaf, pond or white pine, *such pine trees occur* singly or together ; occur as aforesaid; provided that where there are not present , *unless there is in effect for such land a planting, cutting or management plan as provided in subsection C of § 10.1-1163.* Where eight cone-bearing loblolly, shortleaf, pond or white pine trees fourteen inches or larger in diameter are *not present* on any particular acre, there shall be left uncut and uninjured in place of each cone-bearing loblolly, shortleaf, pond or white pine tree of this required diameter class not present for each such pine two such 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.

Drafting Note: No change in the law.

§ 10-76.1. Tulip poplar trees to be left uncut for reseeding purposes.—Every landowner who cuts, or permits to be cut, or any person who is responsible for cutting, or actually cuts, or any person who 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 one acre or more of land on any acre or acres on which tulip poplar (*Liriodendron tulipifera*) occurs and constitutes ten percent or more of the live trees on each acre or acres shall, unless there is in effect for such acre or acres a planting, cutting, or management plan as provided in § 10-82, reserve and leave uncut and uninjured not less than two tulip poplar trees fourteen inches or larger in diameter on each acre thus cut and on each acre or acres on which tulip poplar occurs as aforesaid; provided, that where there are not present two tulip poplar trees fourteen inches in diameter on any particular acre, there shall be left uncut and uninjured in place of each tulip poplar tree of this required diameter class not present two tulip poplar trees of the largest diameter present less than fourteen inches in diameter. Such tulip poplar trees shall be left uncut for the purpose of reseeding the land and shall be healthy, windfirm and of well-developed crowns.

Drafting Note: This section is being repealed at the suggestion of the Department of Forestry. References to tulip poplar trees will be stricken throughout article.

§ 10-77 10.1-1165 . When trees left for reseeding purposes may be cut.—Pine and tulip poplar 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.

Drafting Note: No change in the law. Reference to tulip poplar trees stricken.

§ 10-78 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 and tulip poplar timber grows in appreciable quantities, and may cause such publish notices to be published in newspapers of general circulation in such counties and cities .

Drafting Note: No change in the law.

§ 10-79 10.1-1167 . Penalty for violation ; Commonwealth's attorney to prosecute of article .— Any person violating any of the provisions provision of this article shall be guilty of a misdemeanor and shall, upon conviction ; shall be fined ten twenty dollars for each such seed tree cut from the land on which it is required by in violation of this article to be left; provided the . The total amount of fine for any one acre shall not exceed eighty dollars \$160 .

It shall be the duty of the Commonwealth's attorney of the county or city in which the violation was committed to prosecute all violators of this article.

Drafting Note: The fine has been increased at the suggestion of the Department of Forestry.

§ 10-79.1 10.1-1168 . Procedure to insure ensure proper planting after conviction; cash deposit or bond; inspection or planting by State Forester.—When any person shall be is convicted of failing to leave seed trees uncut as required by § 10-76 10.1-1164 or § 10-76.1 of this article , the judge of the court wherein the person is convicted 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 of Virginia in the amount of ten twenty dollars for each and every seed tree adjudged to be cut in violation of this article ; provided the . The total amount of the cash deposit or bond for any one acre shall not exceed eighty dollars \$160 .

The judge of the court wherein the person is convicted shall cause the said cash deposit or surety bond to be delivered to the State Forester , who shall hold the said 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 insure ensure that the general cutover area on which seed trees are found to be 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 tree ~~found cut~~ in violation ~~under of~~ this article, 100 tree seedlings shall be planted on the general cutover area on which seed trees ~~are found~~ ~~were cut~~ in violation, in spots where seedlings, saplings or trees of the required species ; ~~as hereinafter specified, do not occur at the time of planting are absent~~ . Each seedling shall be planted in a separate hole ; ~~and the seedlings shall be distributed over the area in such a manner that no planted seedling shall be less than at least six feet distant from any other planted seedling ; and seedlings~~ . Seedlings shall ~~not~~ be planted ~~closer than at least six feet to~~ ~~from~~ any sapling or tree which is liable to ~~east may shade from direct sunlight over~~ the planted seedling ; ~~and if existent from direct sunlight~~ . If stems of noncommercial species are present in a number sufficient to prevent the planting of tree seedlings in the manner herein described on any ~~acre or part of an acre of~~ the area in violation, a sufficient number of ~~such stems of noncommercial species~~ shall be removed by cutting, girdling or use of chemicals ~~cut, girdled or poisoned~~ to permit the planting of the required number of seedlings in the manner herein specified ~~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 State 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 ~~previous 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 ~~found cut~~ in violation, or if two or more seed tree species are ~~found cut~~ in violation, the species of the planted seedlings shall be in proportion to the seed trees ~~found 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 ~~violation of violating~~ this article may ; ~~within one year next following date of conviction,~~ plant tree seedlings on the general cutover area of the species and in the manner ~~hereinbefore~~ 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 ~~hereinbefore~~ 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 ~~hereinbefore~~ 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 ~~following~~ planting season, and do such forest cultural work as he ~~may deem~~ ~~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 ~~operation~~ the State Forester shall prepare a certified statement showing the cost of planting, which ~~cost~~ shall be paid from the cash deposit, or if a surety bond has been deposited the State Forester shall ~~proceed to~~ 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 ; ~~if any~~ .

~~In no case shall the~~ ~~The~~ State Forester shall not be required to expend for planting and forest cultural operations more than ~~ten~~ ~~twenty~~ dollars per seed tree ~~found cut~~ in violation of this article.

Drafting Note: Due to current costs the dollar amount has been doubled at the request of the Department of Forestry. There is no other change in the law.

§ ~~10-83.01~~ 10.1-1169 . Liability for failure to carry out planting, cutting or management plan; reforestation of area by State Forester.— (a) A. Any person failing to carry out, fulfill or complete ~~on any acre or acres any of the terms term or provisions provision~~ of any planting, cutting, or management plan submitted to and approved by the State Forester as provided in § ~~10-83~~ of this article subsection C of § 10.1-1163 shall be liable to the Commonwealth of Virginia in a civil suit brought by the Attorney General in the name of the Commonwealth in any court of competent jurisdiction for the failure to carry out , fulfill or complete such plan in an amount not less than eighty dollars at least \$160 per acre for each acre or part of an acre subject to such plan. 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 same money in a special ~~account~~ the Forestry Operations Fund in the state treasury until it is used or released as hereinafter provided. Such deposit may only be spent to ~~insure~~ 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) B. During the year following the date of payment of any judgment rendered in favor of the Commonwealth pursuant to subsection (a) A of this section and at the season of the year 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 may be he deems necessary; in his judgment, to reforest the area adequately. The tree species used in reforesting the area may be the same as the pine or poplar 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) 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) D. The State Forester shall keep an accurate account of all costs involved, including reasonable administrative costs, and shall transfer such costs from the aforementioned special account *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 shall remain unexpended 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) of this section A.

(e) 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.

Drafting Note: No change in the law.

Article 10.

Reforestation of Timberlands.

~~§ 10-90.30. Declaration of public policy.—The preservation of the forests and the conservation of related environmental and multiple use engendered by the forest resource including aesthetics, recreation, oxidation of polluted air, and a natural reservoir for retention of water, for the equal and guaranteed use of present and future generations, and the protection and preservation of forest resources by means of reforestation and continuous growth of timber on lands suitable therefor, are declared to be the public policy of the Commonwealth of Virginia. In declaring this policy, it is recognized that continuous timber growth of commercially valuable species is in the public interest, and can be attained to a considerable degree by making available to landowners assistance, as provided by law, for the preparation of land for reforestation and for reforesting land suitable for growing timber. It is also the policy of the Commonwealth to encourage forest landowners receiving assistance provided by this article to practice multiple forest resource use.~~

Drafting Note: Public policy provisions are being eliminated as they are unnecessary.

~~§ 10-90.31 10.1-1170 . Administration of article.—The State Forester shall administer the provisions of this article 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 rules and 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 State Fund" as provided in § 10-90.37 10.1-1174 for that particular year.~~

Drafting Note: No change in the law.

~~§ 10-90.33. Article inapplicable where certain other sections apply 10.1-1171. Exceptions.— A. The provisions of this article shall not apply to any acre or part of an acre to which §§ 10-76, 10-76.1, 10-77, 10-81, 10.1-1164, 10.1-1165 and 10-83 subsections A and C of § 10.1-1163 apply, except that in the event of if a natural catastrophe occurs, the State Forester may approve projects for reforestation of timberlands projects or for forested stands requiring sanitation and salvage cuttings.~~

~~§ 10-90.34. Article inapplicable to certain tracts in excess of 500 acres.—In any 1 year the B. The provisions of 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.

~~§ 10-90.35. Article inapplicable where landowner receiving federal assistance.—The provisions of this C. 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.~~

Drafting Note: Existing §§ 10-90.33, 10-90.34 and 10-90.35 were merged into one section. The phrase "in any one year" was eliminated from proposed subsection B because it did not appear to be necessary.

~~§ 10-90.32. Reforestation Committee continued as 10.1-1172. Reforestation Board; rules and regulations.—The Reforestation Committee is continued and shall hereafter be known as the Reforestation Board . The Governor shall appoint a Reforestation Board, be appointed by the Governor and consist of the following members: three of whom shall represent representatives of the pine pulpwood industry, three of whom shall represent representatives of the pine lumber industry, one of whom shall be the owner of an operating a sawmill annually producing not more than five million board feet, and three of whom shall be small forest landowners. The State Forester shall be an ex officio a nonvoting member of the Reforestation Board ; and shall serve as secretary of the Reforestation Board.~~

~~From each of the above three-man categories, initially one member shall be appointed for a term of one year, one member for a term of two years, and one member for a term of three years. Thereafter all All members shall be appointed for three-year terms . The sawmill owner shall be appointed for an initial term of three years. No person, except the State Forester who shall be a continuing ex officio member, shall and appointed members may not serve for more than two consecutive terms.~~

~~The Reforestation Board shall annually elect a chairman and shall formulate rules regulations for its organization and procedure.~~

~~The Reforestation Board shall meet not less than twice each year, at such location as it may designate, for the purpose of formulating to formulate recommendations to the State Forester concerning administrative rules, regulations and other matters applicable to this article including, but not limited to, types of equipment to be purchased, rental rates for equipment, and reforestation practices. The rules and regulations adopted by the State Forester and as subsequently amended from time to time for administration of this article shall have the effect of law.~~

Drafting Note: No change in the law. Obsolete provisions pertaining to the initial appointments of the Board members have been removed. The provision pertaining to the effect of the regulations is general law and has been stricken here.

~~§ 10-90.36 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 ; and . 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 rules and regulations.~~

~~Upon the completion of each separate reforestation project in accordance with the recommendations of and approved by 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.~~

~~As an The following incentive to reforesting land ; may be utilized by the State Forester may grant to the landowner from funds appropriated for the purposes of this article, one of the following options :~~

~~(1) The landowner may use available specialized state-owned equipment, tree seedlings, tree seed, materials, and specialized state personnel for preparing and reforesting land, without charge to the extent of seventy-five percent of the total cost of the project as above computed, but not exceeding ninety dollars per acre.~~

~~(2) Whenever a landowner completes a reforestation project in accordance with the recommendations of and approved by 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.

Drafting Note: Existing option (1) above has been stricken since it has not been used. No other change in the law.

~~§ 10-90.27~~ 10.1-1174 . Reforestation of Timberlands State 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. ~~When so paid all~~ All such moneys shall be credited by the State Comptroller as special revenues ; to the " Reforestation of Timberlands State Fund " of the Department of Forestry ~~for expenditure to be expended solely~~ for reforesting the privately owned timberlands of the Commonwealth as provided in this article. ~~Such special revenues so deposited to the credit of the Department of Forestry, shall be used for no other purpose. No portion of such special revenues shall revert to the general fund of the Commonwealth at the end of any fiscal year.~~

Drafting Note: No change in the law.

~~§ 10-90.29~~ 10.1-1175 . Certain rights of landowner not limited.— ~~Nothing in this~~ This article shall be construed to ~~not~~ limit the right of any landowner hereunder from contracting 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.

Drafting Note: No change in the law.

~~§ 10-90.38~~ 10.1-1176 . When provisions of article effective.—This article shall not be effective during any biennium for which the General Assembly ~~shall fail~~ fails to appropriate from the state general fund a sum which equals or exceeds the estimate of the revenue to be collected from the forest products tax for the reforestation of timberland activity for a particular biennium submitted by the State Forester to the Governor on or before November ~~one~~ 1 of the last year of the preceding biennium. ~~The provisions of this article shall be effective beginning July 1, 1981.~~

Drafting Note: No change in the law.

Article 11.

Insect Infestation and Diseases of Forest Trees.

~~§ 10-90.2.~~ Purpose and intent of article.—The purpose of this article is to place within the Department of Forestry, the authority and responsibility for investigating insect infestations and disease infections which affect stands of forest trees, devising and demonstrating control measures to interested landowners and others.

Drafting Note: Provisions pertaining to intent are being removed as they are unnecessary.

~~§ 10-90.3~~ 10.1-1177 . Authority of Department of Forestry.— Authority and responsibility for carrying out the purpose, intent and provisions of this article are hereby delegated to the 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 ~~administration of~~ State Forester shall administer the provisions of this article ~~shall be by the State Forester~~ . Authority for quarantine procedure now vested in the Department of Agriculture and Consumer Services shall remain in that Department.

Drafting Note: No change in the law.

~~§ 10-90.4~~ 10.1-1178 . Definitions.—As used in this article, unless the context clearly requires otherwise a different meaning :

(1) "Person" includes an individual, partnership, corporation, company, society, or association.

"Forest land" means land on which forest trees are found.

(2) "Forest trees" mean means only those trees which are a part of and constitute a stand of

potential, immature, or mature commercial timber trees ; ~~provided, that the~~ . The term "forest trees" ~~shall be deemed to include~~ includes shade trees of any species around houses, along highways and within cities and towns if the same trees constitute an insect or disease menace to nearby timber trees or timber stands.

(3) "Forest land" means land on which forest trees are found.

(4) [Repealed.]

(5) "Infestation" means infestation by means of any insect which is declared by the State Forester to be dangerously injurious to forest trees.

(6) "Infection" means infection by any disease affecting forest trees which is declared by the State Forester to be dangerously injurious thereto 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.

Drafting Note: Terms arranged in alphabetical order. No change in the law.

§ 10-90.5 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 State 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 offer offering him technical advice on methods of carrying out control measures.

Drafting Note: No change in the law.

§ 10-90.6 Appeals.—Any person damaged or aggrieved by any action of the State Forester or any other officer or employee of the Department under the provisions of this article shall have the right to appeal in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

Drafting Note: The provisions of this section duplicate provisions in the Administrative Process Act.

§ 10-90.7 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.

Drafting Note: No change in the law.

§ 10-90.9 10.1-1181 . Control of Forest Tree Insects and Diseases Fund.— There is hereby created in the state treasury a A special fund to be in the state treasury known as the Control of Forest Tree Insects and Diseases Fund : Such 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.

Drafting Note: No change in the law.

CHAPTER 12 .

ENVIRONMENTAL QUALITY.

Article 1.

Definitions.

§ 10-177 10.1-1200 . Short title; definitions Definitions .— chapter may be cited as the "Virginia Environmental Quality Act."

For the purposes of this chapter, the following words are defined: As used in this chapter, unless the context requires a different meaning:

"Council" means the Council on the Environment.

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

"Major state project" means the acquisition of land for any state facility construction, 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 state-supported institutions of higher learning, which costs \$100,000 or more. This term shall not apply to any highway or road construction or any part thereof. For the purposes of this chapter, authority shall not include any industrial development authority created pursuant to the provisions of Chapter 33 (§ 15.1-1373 et seq.) of Title 15.1 of this Code or Chapter 643, as amended, of the 1964 Acts of Assembly. 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 not include any county, city or town of the Commonwealth.

~~(1)~~ *"Person" means any individual or group; any partnership, corporation, association, organization or other legal entity, including any public body.*

~~(2)~~ *"Public body" means any municipal corporation, county, or other political subdivision of the State Commonwealth ; or any agency, department, or instrumentality of the State Commonwealth or of any political subdivision of the State Commonwealth .*

Drafting Note: The short title was stricken as unnecessary. The name of the chapter was changed to "Environmental Quality" because existing Chapters 1.8 and 17 of Title 10 are being combined in this new chapter. The definitions under existing § 10-17.107 have been combined with the definitions in existing § 10-177, and § 10-17.107 has been repealed.

~~§ 10-178. Declaration of policy.—In furtherance of Article XI of the Constitution of Virginia and in recognition of the vital need of citizens of the Commonwealth to live in a healthful and pleasant environment, it is hereby declared to be the policy of the Commonwealth to promote the wise use of its air, water, land and other natural resources and to protect them from pollution, impairment or destruction so as to improve the quality of its environment.~~

~~It shall be the continuing policy of the government of the Commonwealth - in cooperation with the federal government, other state governments, local governments, other public and private organizations, and individuals - to initiate, implement, improve, and coordinate environmental plans, programs, and functions of the State in order to promote the general welfare of the people of the Commonwealth and fulfill the state's responsibility as trustee of the environment for the present and future generations.~~

Drafting Note: This section is being repealed because it states legislative policy. Some of the stricken language was included in proposed § 10.1-1201.

~~§ 10-179. Implementation of policy.—The General Assembly authorizes and directs that, to the fullest extent practicable, the laws, regulations, and policies of the Commonwealth shall be interpreted and administered in accordance with the policies set forth in this chapter, and that the efforts of all state officers and employees shall be coordinated so as to effectuate said policy.~~

Drafting Note: This section is being repealed because it deals with legislative policy.

Article 2.

Council on the Environment.

~~§ 10-180 10.1-1201 . Council established continued .— To implement the policy set forth in this chapter, there is hereby established in the office of the Governor a The Council on the Environment is continued and shall promote the wise use of the Commonwealth's air, water, land and other natural resources and the protection of natural resources from pollution, impairment or destruction .~~

Drafting Note: The words "To implement the policy set forth in this chapter" are stricken because they refer to legislative policy. Some of the language from existing § 10-178 has been added to this section. The words "in the office of the Governor" were stricken as erroneous.

~~§ 10-181 10.1-1202 . Membership; chairman.—The Council on the Environment shall be composed of thirteen members and an administrator who shall all be citizens of the Commonwealth fourteen citizens of the Commonwealth, including an administrator . Three shall be appointed by the Governor on the basis of merit without regard to political affiliation ; subject to confirmation by the General Assembly, but they shall be permitted to serve in the interim between appointment and confirmation or rejection . They shall hold office at the pleasure of the Governor until their successors take office. The Governor shall appoint a~~

member of the Council on the Environment to serve as chairman. The chairmen of the State Water Control Board, the Game and Inland Fisheries Board, the Marine Resources Commission, and the State Air Pollution Control Board, the Directors of the Department of Conservation and Historic Resources, the Department of Mines, Minerals and Energy, and the Department of Waste Management, the State Forester, and the Commissioners of Health and Agriculture and Consumer Services shall also be members of the Council.

Drafting Note: The words "subject to confirmation by the General Assembly" are stricken as duplicative of § 2.1-42.1. The requirement for citizenship of the administrator has been added to proposed § 10.1-1204. Pursuant to the Council's suggestion, the language concerning the number of members has been changed to reflect that the administrator is a member of the Council.

~~§ 10-182. Compensation of members.—The members of the Council shall receive their necessary expenses incurred in the discharge of functions as members of the Council.~~

Drafting Note: This section is not necessary because § 14.1-5.2 provides for reimbursement while on state business.

~~§ 10-183 10.1-1203. Meetings.—The Council shall meet at least once every three months, and other meetings may be held at any time or place determined by a majority of the members of the Council or upon call of the administrator. All members shall be notified of the time and place of any meeting at least five days in advance. Five members shall constitute a quorum for the transaction of business. The Council 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 Council and open to public inspection.~~

Drafting Note: The last two sentences were stricken as unnecessary. The Freedom of Information Act covers the last sentence.

~~§ 10-184.1 10.1-1204 . Appointment, etc., powers and duties of administrator.—The administrator of the Council on the Environment shall be appointed by the Governor ; subject to confirmation by the General Assembly, for a term coincident to with that of the appointing Governor. Any vacancies occurring in the office of administrator shall be filled by the Governor subject to confirmation by the General Assembly . The administrator of the Council on the Environment shall be a citizen of the Commonwealth and devote full time to the duties and responsibilities of his office, which shall include the following:~~

~~(1) 1. Developing uniform management and administrative systems which will assure coherent environmental policies and which will facilitate provision of environmental services to the public;~~

~~(2) Taking necessary steps to promote the efficiency of management and coordinate 2. Coordinating administrative practices within and among the boards and agencies of the Council including the effective use of personnel resources among the agencies;~~

~~(3), (4) Repealed.~~

~~(5) 3. Preparing and submitting annually biennially , with the cooperation of the boards and agencies, an environmental and management report to the Governor and the General Assembly in which he shall assess in detail:~~

~~(a) a. The Council's success in achieving the purposes of the enabling legislation.~~

~~(b) b. The reasons for any failure to achieve those purposes.~~

~~(c) c. Any changes in legislation that the Council believes necessary to better achieve those purposes.~~

~~(d) d. Management actions taken in support of the enabling legislation.~~

~~(e) e. New environmental programs to be considered for legislative action.~~

~~(f) f. New environmentally related programs which should be considered by the General Assembly for transfer to another board or agency or to the jurisdiction of the administrator.~~

Such reports may be prepared in conjunction with the reports of the Council on the Environment as directed by § ~~10-186 10.1-1207~~ .

The administrator shall employ such 4. Employing the personnel and procure procuring the necessary professional services necessary to perform the duties of the office.

Drafting Note: The words "subject to confirmation by the General Assembly" were stricken

because they are duplicative of § 2.1-42.2. The words "on the Environment" were stricken as unnecessary because "Council" is defined in the chapter's definitional section. The language requiring Virginia residency was taken from the stricken language of existing § 10-181. Pursuant to the Council's suggestion, the word "biennially" was substituted for annually as this reflects the Council's current practice.

~~§ 10-185~~ 10.1-1205 . Further responsibility and authority of administrator.—It shall be the further responsibility of the administrator of the Council, in accordance with provisions and limitations as may be elsewhere set forth in law, to carry out the policy of this chapter. In so doing, the administrator is authorized to:

~~(1)~~ 1. Coordinate all state communications with federal agencies involving state concern ~~having relation relating~~ to environmental problems, and to call meetings as needed of heads of state agencies and other personnel to review policies and programs of mutual concern relating to environmental problems;

~~(2)~~ 2. Make rules and regulations for his own staff organization;

~~(3)~~ 3. Sue and be sued in the Council's official name;

~~(4)~~ 4. Enter into and perform contracts ; and , acquire in any lawful manner personal or real property or any interest therein deemed necessary in the performance of the Council's functions, and to maintain and improve such property or dispose of it when necessary;

~~(5)~~ 5. Accept and administer services, gifts and other funds donated to the Council to carry out the policy of this chapter ;

~~(6)~~ 6. Engage and pay for the services of professional consultants; and

~~(7)~~ 7. Initiate and supervise research programs.

~~(8), (9) -Repealed-~~

Drafting Note: The word "regulations" was stricken because it is duplicative of "rules".

~~§ 10-184.2~~ 10.1-1206 . Multiple permit process; powers and duties of administrator; rules and regulations.—A. If a project requires a state permit or certificate from more than one state environmental regulatory agency, the applicant may make a single unified application to the administrator on a form prescribed by the administrator.

B. Notwithstanding any other provision of law, the administrator shall receive and review the application within twenty-one days and at his discretion may consolidate, coordinate and expedite the permit review process including but not limited to the elimination of redundant or overlapping procedures; consolidation of any formal hearings that may be required into one hearing; and coordination of the processing of permits where both federal and state requirements are involved.

C. For the purposes of this section the state environmental regulatory agencies shall include: the State Department of Air Pollution Control Board ; the Department of Conservation and Historic Resources; the State Health Department of Health ; the Marine Resources Commission; and the State Water Control Board.

D. Notwithstanding any other provision of law, the acceptance of an application for multiple permits by the administrator, after the administrator has ascertained that the application is complete and otherwise acceptable, shall commence the processing period as to each board, commission, or state agency involved. The hearing for a multiple state permit shall be held within sixty days after the application to the administrator is complete; and each board, commission, or state agency decision on a multiple permit shall be made within ninety days after the application to the administrator is complete. In exceptional circumstances or in light of new information presented during a public hearing, a board, commission, or state agency may extend the time period for consideration of the multiple permit by a board or commission ; provided that the extension shall be for a period not to exceed thirty days.

E. Judgment of the merits of each required permit that is required shall remain the responsibility of each respective board, commission, or state agency. Each board or commission shall make every effort to coordinate its permit review process with the administrator.

F. The Council on the Environment shall have the authority to issue necessary rules and promulgate regulations necessary to carry out the provisions of this section chapter .

Drafting Note: The word "rules" was stricken because it is duplicative of "regulations" and because regulations is the preferred term under the Administrative Process Act. In subsection F, the word "section" was stricken and replaced by "chapter."

~~§ 10-186 10.1-1207 . Duties of Council – It shall be the duty of the Council to implement the policy of this chapter. Specifically, the Council shall, among other things The Council's duties shall include the following :~~

~~(1) 1. After holding public hearings biennially throughout the Commonwealth, issue issuing a report on the activities of the Council and the state of the environment. The report shall include, among other things:~~

~~(a) a. An assessment, updated biennially, of the any environmental choices and their trends and implications projected over a twenty-year period substantially affecting the Commonwealth that are made by any person ;~~

~~(b) b. Recommendations to the Governor, made in coordination with other state agencies and updated biennially, concerning the policies necessary to exert the influence of the Commonwealth to the fullest extent practicable to change the environmental choices identified in subsection (1) (a) subdivision 1 a above so as to insure ensure , over the next succeeding twenty-year period, the wise use and wise protection of the Commonwealth's natural resources to the end that a balance is achieved and maintained between environmental protection and economic well-being of the Commonwealth ; such recommendations being made by coordinating to the fullest extent practicable with interested state agencies ; and~~

~~(c) c. An assessment of the effects of state policy in ensuring that the objectives in subsection (1) (b) subdivision 1 b above are being and will be met.~~

The Council shall submit the biennial report to the Governor and the General Assembly on or before October 1 of each even-numbered year. The biennial report shall be distributed in accordance with the provisions of § 2.1-467.

~~(2) Advise 2. Advising the Governor and General Assembly, and, on request, assist assisting 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; and recommend~~

~~3. Recommending to the officers and public bodies of the state measures it believes are necessary to enhance the quality of the Commonwealth's environment;~~

~~(3) Conduct 4. Conducting public hearings throughout the Commonwealth to give citizens the opportunity to contribute ideas regarding environmental quality ; and~~

~~(4) Initiate 5. Initiating and supervise supervising programs designed to educate citizens on ecology, pollution and its control, technology and its relationship to environmental problems and their solution, population and its relation to environmental problems, and other matters concerning environmental quality.~~

Drafting Note: The first sentence was stricken because it refers to legislative policy and the subdivisions were renumbered.

Article 3.

Environmental Impact Reports of State Agencies.

~~§ 10-17.107. Definitions.—For the purposes of this chapter, the following words shall have the meanings ascribed to them by this section:~~

~~(a) "Environment" means the natural, scenic and historic attributes of the Commonwealth.~~

~~(b) "Major state project" means the acquisition of land for any state facility construction, 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 the state government, including state-supported institutions of higher learning, which costs \$100,000 or more; provided, this term shall not apply to any highway or road construction or any part thereof. For the purposes of this chapter, authority shall not include any industrial development authority created pursuant to the provisions of Chapter 33 (§ 15-1-1373 et seq.) of Title 15-1 of this Code or Chapter 643, as amended, of the 1964 Acts of Assembly. Nor shall authority include any housing development or redevelopment authority established pursuant to state law. For purposes of this chapter, branch~~

of the state government shall not be construed to include any county, city or town of the Commonwealth.

(e) "Council" shall mean the Council on the Environment.

Drafting Note: This section is repealed because all of the definitions are now included in § 10.1-1200.

§ ~~10-17-108~~ 10.1-1208 . State agencies to submit environmental impact reports on major projects.—All state agencies, boards, authorities and commissions or any branch of the state government shall prepare and submit a report to the Council on each major state project. Such reports shall include, but shall not be limited to, the following:

- (1) 1. The environmental impact of the major state project;
- (2) 2. Any adverse environmental effects which cannot be avoided if the major state project is undertaken;
- (3) 3. Measures proposed to minimize the impact of the major state project;
- (4) 4. Any alternatives to the proposed construction; and
- (5) 5. Any irreversible environmental changes which would be involved in the major state project.

For the purposes of subsection (4) 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 no alternatives were *not* considered.

Drafting Note: No change in the law.

§ ~~10-17-109~~ 10.1-1209 . Council to review report and make statement to Governor.—Within sixty days of the receipt of the environmental impact report by the Council, the Council shall review and make a statement to the Governor commenting on the environmental impact of each major state facility. The statement of the Council shall be available to the General Assembly and to the general public at the time of submission by the Council to the Governor.

Drafting Note: No change in the law.

§ ~~10-17-110~~ 10.1-1210 . 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 such the request is accompanied by the written approval of the Governor after his consideration of the comments of the Council on the environmental impact of such the facility. ~~Provided, however, this~~ This section shall not apply to funds appropriated by the General Assembly prior to June 1, 1973, or any reappropriation by the General Assembly of such funds.

Drafting Note: No change in law.

§ ~~10-17-111~~ 10.1-1211 . Development of procedures, etc., for administration of chapter.—The Council shall, in conjunction with other state agencies, coordinate the development of objectives, criteria and procedures to assure the orderly preparation and evaluation of environmental impact reports required by this ~~chapter~~ 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.

Drafting Note: The word "chapter" was changed to "article" because of the reorganization.

§ ~~10-17-112~~ 10.1-1212 . Cooperation of state agencies.—All departments, commissions, boards, authorities, agencies, offices and institutions within any branch of the state government shall cooperate with the Council in carrying out the purposes of this ~~chapter~~ article .

Drafting Note: The word "chapter" was changed to "article" because of the reorganization.

CHAPTER 13.

AIR POLLUTION CONTROL BOARD.

§ 10-17.9-1. Public policy.—It is declared to be the public policy of the Commonwealth, and the purpose of this chapter, to achieve and maintain 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, will foster the comfort and convenience of its people and their enjoyment of life and property, and will promote the economic and social development of the Commonwealth and facilitate enjoyment of its attractions.

Drafting Note: This section is being repealed because it states legislative policy.

§ 10-17-10 10.1-1300 . Definitions.— The following words, for the purposes of this chapter, shall have the following meanings As used in this chapter, unless the context requires a different meaning :

(a)“Advisory Board” means the State Advisory Board on Air Pollution.

(b)“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.

(c)“Board” means the State Air Pollution Control Board ; sometimes hereinafter referred to as “Board” or “State Board.” .

“Department” means the Department of Air Pollution Control.

(e)“Owner” as used in this chapter 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.

(d)“Special order” means a special order issued under § 10-17-18:1 10.1-1309 .

Drafting Note: Code reference changed and definitions alphabetized. Definition of “Department” has been added to distinguish between the Board and the Department. Section 2.1.1.1 will be amended to include this new department.

§ 10-17-11 10.1-1301 . State Air Pollution Control Board created ; membership; terms; vacancies.— There is hereby created in the Executive Department of the State, the *The State Air Pollution Control Board* to shall be composed of five members to be appointed by the Governor and subject to confirmation by the General Assembly. The first appointments shall be made as follows: two for a term of four years; two for a term of three years; and one for a term of two years; successors to the first appointees hereunder shall be appointed for terms of four years each for *four-year terms* . Vacancies other than by expiration of term shall be filled by the Governor by appointment for the unexpired term.

Drafting Note: The words “and subject to confirmation by the General Assembly” were stricken because they are duplicative of § 2.1-42.2 The language regarding initial appointments was stricken because that time period has expired.

§ 10-17-12 10.1-1302 . Qualifications of members of Board.—The members of the Board shall have the following qualifications: They shall be citizens of the Commonwealth ; they and shall be selected from the Commonwealth at large for on the basis of merit without regard to political affiliation ; the Governor in his appointments shall select persons for their ability and all appointments shall be of such nature as to aid the work of the Board to inspire the highest degree of cooperation and confidence . No officer, employee or representative of any industry, county, city or town which may become subject to the rules and regulations of the Board shall be appointed to the Board. The provisions of this section shall be in addition to the requirements of the State and Local Government Conflict of Interests Act (§ 2.1-639.1 et seq.).

Drafting Note: The word “rules” is stricken because it is duplicative of “regulations” and because regulations is the preferred term under the Administrative Process Act.

§ 10-17-14 10.1-1303 . Chairman ; technical assistants of the Board; Executive Director and staff of Board Department ; cooperation of state agencies.—The Board shall elect its own chairman. The Governor shall appoint an Executive Director who shall serve as executive officer and devote his whole time to the performance of his duties, and he shall have such administrative powers as are conferred upon him by the Board. The Executive Director shall exercise such authority to supervise, administer and enforce the provisions of this chapter and rules, and the regulations and orders of the Board as is conferred upon him by the Board . The Executive Director shall prepare, approve, and submit all requests for appropriations and be responsible for all expenditures pursuant to appropriations. The Executive Director shall employ such technical assistants and staff of the Department as he deems necessary to carry out the functions of the Board. 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.

Drafting Note: The words “for the Department” were added to clarify the distinction between the Board and the Department.

§ 10-17-15 10.1-1304 . Meetings of Board; quorum.—The Board shall meet at least once every three months. 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 ~~duly~~ notified of the time and place of any ~~regular or special~~ meeting at least five days in advance of ~~such~~ *the* meeting. Three members of the Board shall constitute a quorum for the transaction of business.

Drafting Note: No change in the law.

~~§ 10-17-16~~ *10.1-1305* . Records of proceedings of Board ; ~~rules and regulations~~ .—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 ~~executive director~~ *Director* and open for public inspection. ~~Any rules, regulations or variances thereto adopted by the Board to have general effect in part or all of the State shall be filed in accordance with the Virginia Register Act (§ 9-6.15 et seq.)~~.

Drafting Note: The final sentence has been stricken as it appears in subsection I of § 10.1-1307.

~~§ 10-17-17~~ *10.1-1306* . Inspections, investigations, etc.—The Board shall make, or cause to be made, ~~such inspections, conduct~~ 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 ; ~~or become, available from any source~~ for the purposes of this chapter.

Drafting Note: No change in the law.

~~§ 10-17-18~~ *10.1-1307* . Further powers and duties of Board.— ~~(a)~~ A. The Board at all times shall have the power to control and regulate its internal affairs; initiate and supervise research programs ~~for the purpose of determining 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; 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.

~~(a1)~~ B. The Board may adopt *by regulation* emissions standards controlling the release into the atmosphere of air pollutants from motor vehicles , *as provided in §§ 46.1-326.4 and 46.1-326.5* ; provided that any such emissions standards shall have effect only in Arlington County, Fairfax County, Prince William County, City of Alexandria, City of Fairfax, ~~City of Falls Church, City of Manassas, City of Manassas Park, City of Richmond, Henrico County, and Chesterfield County~~ and shall have no force or effect in any other locality in Virginia .

~~(b)~~ The Board, after having made an intensive and comprehensive study of air pollution in the various areas of the Commonwealth, its causes, prevention, control and abatement, shall have the power to formulate, adopt and promulgate, amend and repeal rules and regulations abating, controlling and prohibiting air pollution throughout the Commonwealth or in such areas of the Commonwealth as shall be affected thereby. No such rule or regulation and no such amendment or repeal shall be adopted, so as to 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 in which such persons reside has enacted an otherwise valid ordinance regulating such burning in all or a part of said county, city or town, nor shall any other rule or regulation and no such amendment shall be adopted except after public hearing to be held after thirty days' prior notice thereof by public advertisement of the date, time and place of such hearing, at which opportunity to be heard with respect thereto shall be given to the public. No such rule or regulation and no such amendment or repeal, shall be or become effective until sixty days after the adoption or entry thereof as aforesaid. The rules and 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 rules and regulations.

~~(c)~~ C. After any rule or regulation has been adopted by the Board pursuant to subsection ~~(b)~~ of this section § *10.1-1308* , it may in its discretion grant local variances therefrom, if it finds after a ~~thorough~~ *an* investigation and hearing that local conditions warrant. ~~In the event~~ *If* local variances are permitted, the Board shall issue an order to this effect ; ~~after a hearing is held, which~~ . *Such* order shall be subject to revocation or amendment at any time if the Board after hearing determines ~~such~~ *that the* amendment or revocation is warranted.

~~(d)~~ D. After the Board shall have ~~has~~ adopted the rules or regulations provided for in subsection ~~(b)~~ of this section § *10-1308* 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 for the purpose of enforcement of *to enforce* its rules or regulations pursuant to ~~§ 10-17-18-1~~ *10.1-1309* ; (iii) institute legal proceedings, including suits for injunctions for the enforcement of its orders, rules and

regulations and the abatement and control of air pollution and for the enforcement of penalties, all in accordance with this chapter .

(e) E. The Board, in making rules and regulations ; and in approving variances, control programs, or permits, and the courts in granting injunctive relief under the provisions of this chapter, shall take into consideration such relevant facts and circumstances as may be presented bearing upon relevant to the reasonableness of the activity involved and the regulations proposed to control it, including:

(1) 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) 2. The social and economic value of the activity involved;

(3) 3. The suitability or unsuitability of such the activity to the area in which it is located; and

(4) 4. The practicability, both scientific and economic, scientific and economic practicality of reducing or eliminating the discharge resulting from such activity.

(f) In all cases the Board and in cases involving injunctive relief, the courts shall exercise a wide discretion in weighing the equities involved and the advantages and disadvantages to the residents of the area involved and to any lawful business, occupation or activity involved resulting from requiring compliance with the specific requirements of any order, rule or regulation.

(g) ~~Repealed.~~

(h) F. The Board may designate one of its members, the executive director Director , or a staff assistant to conduct the hearing hearings provided for in this chapter ; provided that a . A record of the hearing proceedings shall be made and furnished to the Board for its use in arriving at its decision resulting from each hearing so conducted .

(i) G. 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 state's Commonwealth's air pollution control policies and on the status of the state's Commonwealth's air quality. The annual report shall be distributed in accordance with the provisions of § 2.1-467.

H. Any regulations or variances thereto 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 (§ 9-6.15 et seq.).

Drafting Note: Code references changed. Subsection (b) has been repealed and the language of that subsection now appears in § 10.1-1308. The word "rules" has been stricken because it is duplicative of "regulations" and regulations is the preferred term under the Administrative Process Act. Subsection H is the language which was stricken from existing section 10-17.16. Subsection F was stricken as unnecessary and the remaining subsections were relettered.

§ 10.1-1308. Regulations.—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 abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.). 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. No regulation shall become effective until sixty days after its adoption. 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.

Drafting Note: This is a new section which incorporates subsection (b) of old § 10-17.18.

§ ~~10-17.18:~~ 10.1-1309 . Issuance of special orders.— A. The Board shall have the power :

(a) ~~To~~ to issue special orders to :

(1) ~~to~~ (i) owners who are permitting or causing air pollution as defined by subsection (b) of § ~~10-17.10~~ § 10.1-1300 , to cease and desist from such pollution;

(2) ~~to~~ (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;

~~(3) to (iii)~~ owners who have violated or failed to comply with the terms and provisions of any Board order or directive issued by the Board, to comply with such terms and provisions;

~~(4) to (iv)~~ owners who have contravened duly adopted and promulgated air quality standards and policies, to cease ~~and desist from~~ such contravention and to comply with such air quality standards and policies; and

~~(5) to (v)~~ require any owner to comply with the provisions of this chapter and any Board decision of the Board .

~~(b) B.~~ Such special orders are to be issued only after a hearing 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) C~~ below ; ~~provided, that if the Board finds . 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 ; ~~whether used for recreational, commercial, industrial, agricultural or other reasonable uses~~ , after a reasonable attempt to give notice, it shall declare a state of emergency and it may issue without hearing an emergency special order directing the owner to cease such pollution immediately, and shall within ten 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 § ~~10-17-23 10.1-1316~~ or § ~~10-17-29 10.1-1320~~ .

~~(c) 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) D.~~ Nothing in this section or in § ~~10-17-18 10.1-1307~~ shall limit the Board's authority to proceed against such owner directly under § ~~10-17-23 10.1-1316~~ or § ~~10-17-29 10.1-1320~~ without the prior issuance of order, special or otherwise.

Drafting Note: Code references changed.

§ ~~10-17-18:2 10.1-1310~~ . Decision of Board pursuant to hearing.—Any decision by the Board rendered pursuant to hearings under § ~~10-17-18:1 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 of the Board is based. Certified copies of such the written decision shall be delivered ~~to~~, 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.

Drafting Note: Code references changed.

§ ~~10-17-18:3 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 (§ 9-6.14:1 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 such a sum as the court shall deem 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 of assessing and collecting same , shall be paid into the general fund of the state treasury by the Board pursuant to such court order.

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.

Drafting Note: No change in the law.

~~§ 10-17-19~~ 10.1-1312 . Air pollution control districts.— ~~(a)~~ A. The Board may create, within any area of the *State 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)~~ B. In each district there shall be a local air pollution control committee, the members of which shall be appointed by the *State 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 ~~such~~ committee shall be in the discretion of the *State Board*. When a district includes two or more localities or portions thereof, the *State Board* shall apportion the membership of the committee among the localities, provided that each locality shall have at least one representative on ~~such~~ the committee. The members shall not be compensated out of state funds, but may be reimbursed for expenses out of state funds. ~~Such localities~~ *Localities* may provide for the payment of compensation and reimbursement of expenses to the members ; ~~the~~ *and may appropriate funds therefore.* The portion of such payment to be borne by each locality ~~to~~ shall be prescribed by agreement ; ~~and may appropriate funds therefor~~ .

~~(c)~~ 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 ~~staff of the Board~~ *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)~~ 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.

Drafting Note: No change in the law.

~~§ 10-17-20~~ 10.1-1313 . State Advisory Board on Air Pollution.—The Board is authorized to name ~~technically~~ qualified ~~citizens~~ *persons* to a State Advisory Board on Air Pollution.

Drafting Note: No change in the law.

~~§ 10-17-21~~ 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.

Drafting Note: No change in the law.

~~§ 10-17-22~~ 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, ~~for the purpose of obtaining to obtain~~ information or ~~conducting~~ *conduct* surveys or investigations.

Drafting Note: No change in the law.

~~§ 10-17-23~~ 10.1-1316 . Compelling compliance with ~~rules~~, regulations ~~or~~ *and* orders of Board; penalty for violations.—A. Any owner violating ; or failing, neglecting or refusing to obey any ~~rule~~, *Board* regulation or order of the *Board* may be compelled to ~~obey the same and comply therewith~~ by injunction, mandamus or other appropriate remedy.

B. Without limiting the remedies which may be obtained ~~in~~ *under* subsection A, any owner violating or failing, neglecting or refusing to obey any ~~rule~~, *Board* regulation or order of the *Board* or any provision of this chapter, shall be subject, in the discretion of the court, to a civil penalty not to exceed \$25,000 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 ~~such~~ 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 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 ~~for the purpose of abating to abate~~

environmental pollution ~~therein~~ in such manner as the court may, by order, direct, except that where the owner in violation is ~~such~~ the county, city or town itself, or its agent, the court shall direct ~~such~~ the penalty to be paid into the state treasury.

C. With the consent of an owner who has violated or failed, neglected or refused to obey any ~~rule~~, Board regulation or order of the Board or any provision of this chapter 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 ~~instead~~ in lieu of any ~~appropriate~~ civil penalty which could be imposed under subsection B.

Drafting Note: The words "rule" and "rules" have been stricken because they are duplicative of "regulation" or "regulations", which are the preferred terms under the Administrative Process Act.

~~§ 10-17-23:1~~ 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 (§ 9-6.14:1 et seq.).

Drafting Note: No change in the law.

~~§ 10-17-23:2~~ 10.1-1318 . Appeal from decision of Board.—Any owner aggrieved by a final decision of the Board under ~~§ 10-17-18:1~~ 10.1-1309 or subsection ~~(d)~~ D of ~~§ 10-17-18~~ 10.1-1307 is entitled to judicial review thereof in accordance with the provisions of the Administrative Process Act (§ 9-6.14:1 et seq.).

Drafting Note: Code references changed.

~~§ 10-17-28~~ 10.1-1319 . Appeal to Court of Appeals.—The Commonwealth or any party aggrieved by any ~~such~~ 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.

It shall be the duty of the Attorney General to represent the Board or designate some member of his staff to represent it.

Drafting Note: The last sentence of existing § 10-17.28 was stricken as unnecessary because it is duplicative of § 2.1-121.

~~§ 10-17-29~~ 10.1-1320 . Penalties; chapter not to affect right to relief or to maintain action.—~~(a)~~ Any owner violating any provision of this chapter or of the rules and regulations of the Board regulation , or failing, neglecting, or refusing to comply with any order of the Board, lawfully issued as herein provided shall upon conviction be guilty of a misdemeanor and shall be liable subject to a fine of not more than \$1,000 for each violation within the discretion of the court. Each day of continued violation after conviction shall constitute a separate offense.

~~(b)~~ 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.

Drafting Note: The word "rules" is stricken because it is duplicative of "regulations" and regulations is the preferred term under the Administrative Process Act.

~~§ 10-17-30~~ 10.1-1321 . Local ordinances.— The authority of any governing body of a locality to continue in use or to adopt ordinances relating to air pollution shall be as follows :

~~(a)~~ A. Existing local ordinances adopted prior to July 1, 1972 , shall continue in force; ~~provided, that however,~~ in the event of a conflict between a rule or Board regulation of the Board and a provision or provisions of a local ordinance, the rule or Board regulation of the Board shall govern, except when the conflicting provision or provisions of the local ordinances are ordinance is more stringent than the rule or regulations of the Board, in which event, the local ordinance shall prevail .

~~(b)~~ 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 State Board as to the provisions of ~~such~~ the ordinance or amendment. The Board shall not approve any local ordinance less stringent than the pertinent regulations of the Board.

Drafting Note: The word "rule" is stricken because it is duplicative of "regulation" and regulation is the preferred term under the Administrative Process Act.

~~§ 10-17-30:1~~ 10.1-1322 . Permits.—The Board by regulation may prescribe and provide for the payment and collection of fees for the application for and issuance of permits for major stationary air pollution sources. Fees shall be set at such a level that the total amount collected

will approximately equal the cost of administering and enforcing the permit system ; , but in no case shall the level of such fees exceed \$1,000 per individual permit.

Drafting Note: No change in the law.

CHAPTER 14.

VIRGINIA WASTE MANAGEMENT ACT.

Article 1.

General Provisions.

~~§ 10-263. Short title.—The short title of this chapter is the Virginia Waste Management Act.~~
Drafting Note: This section is being repealed because it is not necessary.

~~§ 10-264 10.1-1400 .~~ Definitions.—As used in this chapter unless the context clearly requires a different meaning:

“Board” means the Virginia Waste Management Board.

“Department” means the Department of Waste Management.

“Director” means the Director of the Department of Waste Management.

“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 ~~of~~ or discharged into any waters, including groundwaters.

“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.

“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.

“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 so as to pose within the determination of the Board a substantial present or potential hazard to human health or the environment, including the pollution of air, land, surface water or groundwater.

“Person” includes an individual, corporation, partnership, association, a governmental body, a municipal corporation or any other legal entity.

“Radioactive waste” or “nuclear waste” ~~shall include~~ includes :

1. “Low-level radioactive waste” which means radioactive material that:
 - a. Is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 11e (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.

"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 groundwater.

"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, and from 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 byproduct material as defined by the Federal Atomic Energy Act of 1954, as amended.

"Transport" or "transportation" means any movement of property by any mode, 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 the waste or to render the waste less hazardous or nonhazardous, safer for transport, amenable to recovery, amenable to or storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of a hazardous waste to render it less hazardous or nonhazardous.

"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.

Drafting Note: No change in the law. Existing word "of" appears to be a typographical error and therefore the word "or" has been substituted. The last sentence in the definition of "Treatment" was stricken because it was duplicative of the preceding sentence.

§ 10-265 10.1-1401. Virginia Waste Management Board *continued*; ~~creation~~.—A. There is hereby created the The Virginia Waste Management Board; hereinafter referred to in this chapter as the "Board." The Board *is continued* and shall consist of seven Virginia residents appointed by the Governor; ~~subject to confirmation by the General Assembly~~. Upon initial appointment, three members shall be appointed for four-year terms, two for three-year terms, and two for two-year terms. Thereafter, all members shall be appointed for terms of four years each. Vacancies occurring other than by expiration of a term shall be filled by the Governor in the same manner as the original appointment 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. Members shall be entitled, when on the business of the Board, to be compensated as provided in § 2.1-20.3 of this Code.~~

~~E. 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 ~~duly~~ notified of the time and place of any ~~regular or other~~ meeting at least five days in advance of ~~such~~ the meeting.

~~G. The Board shall cause to be made and shall keep a complete and accurate record of its proceedings. A copy of the record shall be available for public inspection and copying at the office of the Department.~~

Drafting Note: The words "subject to confirmation by the General Assembly" are stricken because this requirement appears in § 2.1-42.2. The words "regular or other" have been stricken as surplus. Subsection D was stricken because it is unnecessary as was subsection G because of the Freedom of Information Act and the remaining subsections were relettered.

~~§ 10-266~~ 10.1-1402. Powers and duties of the Board.—The Board is responsible for carrying ~~shall~~ carry out the purposes and provisions of this chapter and compatible provisions of federal acts and is authorized to:

1. ~~Exercise general supervision~~ Supervise and control ~~over~~ waste management activities in the Commonwealth.

2. ~~To consult~~ Consult, advise and coordinate with the Governor, the Secretary, the General Assembly, ~~and~~ other state agencies 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, ~~and~~ advice ~~or~~ 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 ~~such~~ data and information as may be 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 ~~such~~ records, ~~manifest~~ manifests and reporting ~~system~~ systems as may be 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 which it deems to be hazardous.

9. Consult and coordinate with the heads of ~~any other~~ appropriate state and federal agencies, ~~any appropriate~~ independent regulatory agencies and ~~any other appropriate~~ 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. Make application for ~~such~~ Apply for federal funds as may become available under federal acts and to transmit such funds when applicable to any appropriate person ~~persons~~.

11. Promulgate and enforce ~~such~~ regulations, and provide for reasonable variances and exemptions as may be necessary to carry out its powers and duties and the intent of this chapter and the federal acts.

12. Subject to the approval of the Governor, acquire by purchase, exercise of the right of eminent domain as provided in Chapter 1.1 (§ 25-46.1 et seq.) of Title 25, 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 ~~any and all~~ 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.

15. Collect, from any person operating or proposing to operate a hazardous waste treatment, storage or disposal facility or any person transporting hazardous waste, permit application fees sufficient to defray only costs related to the issuance of permits as required in this chapter in accordance with ~~Board regulations promulgated by the Board~~, 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.

16. ~~To issue~~ *Issue*, deny, amend and revoke certification of site suitability for hazardous waste facilities in accordance with this chapter.

17. ~~To make~~ *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.

18. Take actions to contain or clean up sites where solid or hazardous waste has been improperly managed and to institute legal proceedings to recover the costs of the containment or clean-up activities from the responsible parties.

19. Collect, hold, manage and disburse funds received for violations of solid and hazardous waste laws and regulations or court orders pertaining thereto pursuant to ~~subsections C and D of § 32.1-27, subdivision 18 of this section and subsections A, E and F of § 10-310 10.1-1455~~, for the purpose of responding to solid or hazardous waste incidents and clean-up of sites which 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.

20. ~~To abate~~ *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.

Drafting Note: No change in the law. The language "subsections C and D of § 32.1-27" was stricken as it duplicates the penalty section of this chapter. Code reference changed.

§ ~~10-267~~ *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.

Drafting Note: No change in the law.

§ ~~10-268~~ *10-1404*. ~~Creation of Department~~ *continued*; general powers.—A. There is hereby ~~created a The Department of Waste Management hereinafter referred to in this chapter as the Department is continued~~. The Department shall be headed by an Executive Director, ~~hereinafter referred to in this chapter as the "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. ~~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.~~

B. In addition to the powers designated elsewhere in this chapter, the Department shall have the following general powers, all of which, with the approval of the Director, may be exercised by a unit, board or division of the Department with respect to matters assigned to that ~~organizational entity~~ *power to* :

1. Administer the policies , rules 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.

Drafting Note: No change in the law. The words "hereinafter referred to in this chapter as the Department" were stricken because it is defined in the definitional section of the chapter. The word "rules" was stricken because "regulations" is the preferred term under the Administrative Process Act. The last sentence of the first paragraph is covered by § 2.1-41.2.

§ ~~10-269~~ 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 ~~rules~~, 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 ~~rules and~~ 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.

Drafting Note: No change in the law. The word "rules" was stricken because it is duplicative of "regulations" and because regulations is the preferred term under the Administrative Process Act.

§ ~~10-270~~ 10.1-1406. Virginia Solid and Hazardous Waste Contingency Fund.—For the purposes of responding to solid or hazardous waste incidents and clean-up of sites which have been improperly managed, there is hereby established the Virginia Solid and Hazardous Waste Contingency Fund.

This fund shall be a ~~nonlapsing~~, revolving fund consisting of moneys received for *civil penalties assessed for* violations of solid and hazardous waste laws and regulations or court orders pertaining thereto pursuant to ~~subsections C and D of § 32.1-27~~, subdivisions 18 and 19 of § ~~10-266~~ 10.1-1402 and ~~subsection A of § 10-310~~ § 10.1-1455. These moneys shall be deposited by the ~~comptroller~~ Comptroller to the Virginia Solid and Hazardous Waste Contingency Fund to be appropriated for the purposes stated above as the General Assembly deems necessary.

Drafting Note: Code references changed.

§ ~~10-270.1~~ 10.1-1407. Notice to local governing bodies.—Upon receiving and before reviewing an application for a solid or hazardous waste disposal facility, the Director shall immediately notify in writing the governing body of the county, city or town wherein the proposed facility is to be located. Within thirty days of receiving notice, the governing body may elect to hold a public hearing on this matter. The governing body shall inform the Director in writing within five days of receiving the notice that it has or has not elected to hold a hearing. The governing body shall transmit its recommendations to the Director within ten days of any such hearing, but not later than forty days from the time of receiving notice from the Director.

~~In the event~~ If the governing body elects not to hold a hearing, it shall submit its recommendations to the Director within ten days of receiving the notice. The Director shall not issue a permit until he has received the recommendations of the governing body or until ten days have elapsed after the date the recommendations were to have been received by him from the local governing body.

Drafting Note: No change in the law.

Article 2.

Solid Waste Management.

~~§ 10-271~~ 10.1-1408. Permits required; open dumps prohibited.—A. No person shall operate any sanitary landfill or other facility for the disposal of solid waste without a permit from the Director. No such permit shall be issued until the Director has received notification from the governing body of the county, city or town in which the landfill or other facility is to be located, that the location of the landfill or other facility is consistent with all ordinances adopted pursuant to Chapter 11 (§ 15.1-427 et seq.) of Title 15.1. The governing body of the county, city or town shall provide the required notification within thirty days after receipt of notice from the Director of an application for a solid or hazardous waste disposal facility. Failure of the governing body to provide notification within the thirty-day period shall constitute a waiver of the governing body's objections to issuance of a permit ~~which are based on conflict with~~ *due to a conflicting* local ordinance.

B. Any permit shall contain such conditions or requirements as are necessary to comply with the requirements of this Code and to prevent a substantial present or potential hazard to human health ~~and~~ or the environment.

C. The disposal of solid waste in open dumps is prohibited.

D. 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 contiguous property of the same landowner from which such materials were cleared. This exemption shall not apply to any person who receives such materials from another site, whether or not for compensation.

Drafting Note: The word "and" was inconsistent with the language in other sections of this chapter which used the word "or."

~~§ 10-272~~ 10.1-1409. Revocation or amendment of permits.—A. Any permit issued by the Director pursuant to this article may be revoked when any of the following conditions exist:

1. The permit holder violates any regulation adopted pursuant to this article so as to pose a substantial present or potential hazard to human health or the environment ; ;

2. The sanitary landfill or other facility used for disposal 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 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 of solid waste pose a threat of contamination or pollution of the air, surface waters or groundwater in a manner resulting in a substantial present or potential hazard to human health or the environment ; ; *or*

5. The person to whom the permit was issued abandons, sells, leases or ceases to operate the facility permitted.

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 groundwater ; ;

3. Investigation has shown the need for additional equipment, construction, procedures and testing to insure 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 ~~Department Board~~ regulations, ~~the Director~~ he may revoke the permit issued for such facility ~~or, as~~ . As a condition to granting or continuing in effect a permit, ~~he~~ may also require the person to whom the permit was issued ~~permittee~~ to enter into an agreement with the Director that such person will provide perpetual care and surveillance of the facility.

Drafting Note: No change in the law.

§ ~~10-273~~ 10.1-1410. Financial responsibility for abandoned facilities.—A. The Board shall promulgate regulations which ensure that ; ~~in the event that if~~ a facility for the disposal 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.

B. The 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 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.

C. ~~No state, local or other~~ 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 pursuant to this section and the regulations of the ~~Department 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 ~~such~~ forfeited funds as necessary to restore and maintain ~~such~~ facility in a safe condition.

Drafting Note: No change in the law. The word "a" was inserted into subsection D.

§ ~~10-274~~ 10.1-1411. Designation of regional boundaries; regional solid waste management plans.—The Governor may designate regional boundaries for solid waste management. In the designation of such boundaries, the Governor shall consider urban concentrations, geographic conditions, markets and other factors as may be appropriate for carrying out regional solid waste management. The governing bodies of the counties, cities and towns within any region so designated shall be responsible for the development of a comprehensive regional solid waste management plan in cooperation with any planning district commission or commissions in ~~such~~ the region. Each regional solid waste management plan shall include all aspects of solid waste management. The governing body of each county, city or town shall be responsible for ensuring, within its jurisdictional boundaries, the implementation of those portions of the regional solid waste management plan applicable to such county, city or town. Until ~~such~~ the date as a county, city or town becomes subject to a regional solid waste management plan, ~~such~~ the county, city or town shall be responsible for implementation of a local solid waste management plan which meets ~~such~~ standards as may be prescribed by the ~~Department~~ by Board regulation. The implementation plans shall include adequate provisions for the disposal of construction waste and land-clearing debris generated within the county, city or town and such plans shall be implemented as expeditiously as possible.

For the purposes of this section, construction waste and land-clearing debris shall ~~consist of~~ mean solid waste generated attendant to construction of structures, demolition of structures, or clearing of trees, brush and other vegetation from land as a result of such construction or demolition. This section shall not be ~~construed to~~ require a local government to provide facilities for the management of any hazardous waste generated as a result of such activities. Furthermore, ~~nothing in~~ this section shall be ~~construed so as to~~ not affect the right of private landowners who use their land for agricultural purposes to ~~remove cut trees, brush, or other vegetation from~~ on their land where ~~such material is deposited and deposit it on their own that~~ same property.

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.

Drafting Note: The words "consist of" were changed to "mean."

§ ~~10-275~~ 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.

Drafting Note: No change in the law.

§ ~~10-276~~ 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 adopted by the Board*, 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.

Drafting Note: No change in the law.

Article 3.

Litter Control and Recycling.

§ ~~10-277.1~~ 10.1-1414. Definitions.—As used in this article, *unless the context requires a different meaning*:

"Disposable package or container" means all packages or containers intended or used to contain solids, liquids or materials and so designated;

"Litter" means all waste material including but not limited to 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 other container made of any durable material which is large enough to serve as a receptacle for litter inside ~~the~~ a vehicle or watercraft of any person. ~~It is not necessarily limited to the state approved litter bag but shall be~~ *which is similar in size and capacity to a state approved litter bag*;

"Litter receptacle" means ~~those containers which are acceptable to the Department, which may be standardized as to size, shape, capacity and color, and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter~~;

"Person" means any natural person, corporation, partnership, 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;

"Sold within the Commonwealth" or "sales of the business within the Commonwealth" means all sales of retailers engaged in business within the Commonwealth and ~~all sales of products for use and consumption within the Commonwealth in the case of manufacturers and wholesalers 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; and

“Watercraft” means any boat, ship, vessel, barge, or other floating craft.

Drafting Note: No change in the law. The words “those” and “which are” were stricken as unnecessary. The definitions of “Sold within the Commonwealth” and “sales of business within the Commonwealth” were reworded to provide clarity.

~~§ 10-277. 10.1-1415. Litter Control Program.— The General Assembly declares that it is the purpose of this article to accomplish litter control throughout the Commonwealth by delegating to and vesting in the Department of Waste Management, authority to conduct a continuous program to control, prevent and eliminate litter from the Commonwealth and to encourage the recycling of discarded materials to the maximum practical extent. The Director shall establish within the Department of a Division of Litter Control and Recycling to conduct such a continuous program ; and to control, prevent and eliminate litter from the Commonwealth and to encourage the recycling of discarded materials to the maximum practical extent. He shall appoint a qualified person in accordance with established state personnel policies and procedures to direct the work of the Division. The Department shall ensure that the costs of administering such program shall not exceed revenues generated from litter control taxes. Litter control taxes shall include the taxes increased by Chapter 616 of the 1977 Acts of Assembly and the taxes imposed under §§ 58.1-1700 through 58.1-1710. 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.

Drafting Note: No change in law. The word “a” has been substituted for the stricken word “of”, which appears to be a typographical error. The word “to” has been added to correct the sentence structure. The policy language was stricken and then reinstated later in the paragraph.

~~§ 10-277.2. Rules and regulations; Administrative Process Act.—In addition to its other powers and duties, the Board shall have the power to propose and to adopt rules and regulations necessary to carry out the provisions, purposes and intent of this article pursuant to the Administrative Process Act, Chapter 1-1:1 (§ 9-6.14:1 et seq.) of Title 9.~~

Drafting Note: This section is being repealed because it is repetitive of § 10.1-1402(11).

~~§ 10-277.3 10.1-1416. Collection and survey of litter.—Collections and surveys of the types and 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 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 by item, weight and volume, 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.
- Drafting Note: No change in the law.

§ 10-277-4 10.1-1417 . Enforcement of article.— ~~The Department may designate its trained employees to be vested with police powers to enforce and administer the provisions of this article and all rules and regulations adopted hereunder.~~ The Department shall also 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 Game and Inland Fisheries vested with police powers shall enforce the provisions of this article and ~~all rules and regulations adopted hereunder,~~ and are hereby empowered to arrest without warrant, persons violating any provision of this article or any ~~of the rules and regulations adopted hereunder.~~ ~~All of the~~ 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 rules and regulations adopted hereunder.~~

Drafting Note: The word "rules" was stricken because it is duplicative of regulations and regulations is the preferred term under the Administrative Process Act. The first sentence was stricken as unnecessary.

§ 10-277-5 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.

Drafting Note: No change in the law.

§ 10-277-6 10.1-1419 . Litter receptacles; placement; penalty for violations.—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 ~~of litter from the receptacles~~ .

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 ~~rules and Board regulations adopted by the Board~~ .

C. Any person who fails to place and maintain such litter receptacles on the premises in the number and manner required by ~~rule or regulation of the Board~~ *regulation* , or who violates the provisions of this section or ~~rules or regulations adopted hereunder~~ shall be subject to a fine of twenty-five dollars for each day of violation.

Drafting Note: No change in the law.

§ 10-277-7 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 ~~such~~ the litter bags available to the owners of watercraft in the Commonwealth and may also provide ~~such~~ the litter bags at no charge ~~for~~ to tourists and visitors at points of entry into the Commonwealth and at visitor centers to the operators of incoming vehicles and watercraft.

Drafting Note: No change in the law.

~~§ 10-277.8 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.

Drafting Note: No change in the law.

~~§ 10-277.9 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 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 and anti-litter efforts;

4. Encourage, organize, and coordinate all voluntary local recycling 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 the field of 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 ~~fund~~ 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 such successful techniques as may aid in recycling and the control and elimination of litter;

8. ~~Establish rules and~~ *Promulgate* regulations for making either direct or matching grants to localities to promote enforcement of anti-litter statutes and ordinances and to enhance local recycling and litter control programs; *and*

9. Expend at least fifty percent of the funds allocated *annually* to the Litter Control and Recycling Program ~~in each year~~ pursuant to contracts with localities. The Department may enter into contracts with planning district commissions for the receipt and expenditure of funds attributable to such localities as shall ~~which~~ designate in writing to the Department a planning district commission as the agency to receive and expend funds hereunder.

Drafting Note: No change in the law.

~~§ 10-277.10 Private organizations to cooperate in recycling and anti-litter campaign.—To aid in the statewide recycling and anti-litter campaign, all business, industry and private organizations which are active in recycling and anti-litter efforts are requested to cooperate with the Department so that the state recycling and anti-litter campaign may be made more effective.~~

Drafting Note: This section is being repealed as it requests but does not require anything.

~~§ 10-277.11 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.

Drafting Note: No change in the law.

~~§ 10-277.12 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 such 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.

Drafting Note: No change in the law.

§ ~~10-277.14~~ 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.

Drafting Note: No change in the law.

Article 4.

Hazardous Waste Management.

§ ~~10-279~~ 10.1-1426. Permits required; waiver of requirements; reports; conditional permits.—A. No person shall transport, 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.

Drafting Note: No change in the law.

§ ~~10-280~~ 10.1-1427. Revocation or amendment of permits.—A. Any permit issued pursuant to this article may be revoked when any of the following conditions exist:

1. The permit holder violates any regulation adopted pursuant to this article so as to pose a substantial present or potential hazard to human health or the environment ; ;

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 groundwater ; ; or

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.

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 groundwater ; ;

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 ~~Department 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 ~~enter into an agreement with the Director that the person will provide perpetual care and surveillance of the facility.~~

Drafting Note: The language requiring the making of an agreement was stricken because an agreement cannot be required.

~~§ 10-281~~ 10.1-1428. Financial responsibility for abandoned facilities.—A. The ~~Department Board~~ shall promulgate regulations which ensure that, ~~in the event 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 ~~such other mechanism as~~ *mechanisms that* the Department ~~may deem~~ *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 ~~Department Board~~ shall be paid 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 the forfeited funds as necessary to restore and maintain the facility in a safe condition.

Drafting Note: No change in the law.

~~§ 10-282~~ 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.

Drafting Note: No change in the law.

Article 5.

Radioactive Waste.

~~§ 10-283~~ 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.

Drafting Note: No change in the law.

~~§ 10-284~~ 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 ~~an agreement or~~ 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 ; ~~from funds provided by law,~~ 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.

Drafting Note: No change in the law.

~~§ 10-285~~ 10.1-1432. Further powers of Board.—The Board shall have the power, subject to the

approval of the Governor:

A. 1. To acquire by purchase, exercise of the right of eminent domain as provided in Chapter 1.1 (§ 25-46.1 et seq.) of Title 25 of this Code, 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 any and all 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 which are to be designated as radioactive waste material sites shall be acquired in fee simple absolute and dedicated in perpetuity to such purpose ; ;

B. 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 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 in the event if the grantee or lessee ; as the lease may be, shall cease 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 ; ;

C. 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 in the event 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 are hereby appropriated for such purpose. ; and

D. 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.

Drafting Note: The final clause of subdivision 3 was stricken as improper.

Article 6.

Siting of Hazardous Waste Facilities.

§ 10-287. Purpose.—The General Assembly finds and declares that the improper storage and disposal of hazardous waste is detrimental to public health, natural resources and the environment; that adequate capacity in safe and environmentally acceptable facilities for the treatment, storage and disposal of hazardous wastes is essential to the economic growth and well-being of Virginia industries; that ensuring the safe, economical and proper treatment, storage and disposal of hazardous wastes is a public purpose in the best interest of all of the citizens of this Commonwealth; that it is necessary to establish a process for the rational siting of hazardous waste facilities; and that the informed participation of the public and of elected and appointed officials at all levels of government is essential to such a process.

The General Assembly further finds that properly constructed and operated hazardous waste treatment, storage and disposal facilities confer benefits on the Commonwealth but may impose disproportionate burdens in the areas where they are located. It is thus the policy of the General Assembly that the owners, operators and users of such facilities should, to the extent that it is feasible, eliminate or reduce these burdens by any means appropriate, including mitigation and compensation.

It is also the policy of the General Assembly that controversies and conflicts over the local impacts of hazardous waste facility siting decisions should be resolved, to the extent feasible and practical, by negotiation, mediation and similar conflict resolution techniques. To that end, the Department is directed to compile and maintain information on the use and availability of conflict resolution techniques and to make this information available to Virginia industries, state and local government officials, and other citizens.

It is the intent of the General Assembly that, in the implementation of this chapter, the responsible state agencies shall encourage alternatives to land burial of hazardous wastes which will reduce, separate, neutralize, recycle, exchange or destroy hazardous wastes whenever possible.

It is the further intent of the General Assembly that hazardous waste treatment, storage and disposal facilities should be privately owned and operated to the extent feasible, and, whether privately or publicly owned and operated, should be subject to strict governmental regulation, and that the costs of long-term post-closure care and maintenance of hazardous waste treatment, storage and disposal facilities should be borne by their owners and operators.

Drafting Note: This section is being repealed because it states legislative policy and many of its provisions are included as duties under § 10.1-1434.

§ 10-288 10.1-1433. Definitions.— In addition to those definitions set forth in § 10-264 of this chapter, the following shall apply to this article 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 § 10-292 10.1-1436 of this Code .

“Fund” means the Technical Assistance Fund created pursuant to § 10-304 10.1-1448 of this Code .

“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 chapter 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 the waste *it* or to render the waste *it* less hazardous or nonhazardous, safer for transport, amenable to recovery ; amenable to or storage or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of a hazardous waste to render it less hazardous or nonhazardous.

Drafting Note: Code references changed. Last sentence in definition of treatment was stricken as unnecessary.

§ ~~10-290~~ 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 following powers and duties with respect to certification of hazardous waste facility sites :

1. Subject to the approval of the Governor, to request and avail itself 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. To ~~hold~~ Hold public meetings or hearings on any matter related to the siting of hazardous waste facilities;
3. To ~~coordinate~~ Coordinate the preparation of and to adopt criteria for the siting of hazardous waste facilities;
4. To ~~grant~~ Grant or deny certification of site approval for construction of hazardous waste facilities;
5. To ~~promulgate~~ Promulgate regulations and procedures for approval of hazardous waste facility sites;
6. To ~~adopt~~ Adopt a schedule of fees to charge applicants and to collect fees for the cost of processing applications and site certifications; and
7. To ~~do and perform~~ Perform any acts and things authorized by this chapter under, through or by means of its own officers, agents and employees, or by contract with any person.

Drafting Note: Subsection A was added to include language removed from existing § 10-287.

§ ~~10-291~~ 10.1-1435 . Certification of site approval required; "construction" defined; remedies.—
A. ~~1.~~ 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.

2. 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 ~~chapter article~~ , any changes in the facilities which are designed to:

a- 1. Prevent a threat to human health or the environment because of an emergency situation;

b- 2. Comply with federal or state laws and regulations; or

e- 3. Demonstrably result in safer or environmentally more acceptable processes.

~~B- 1. C. Any person who violates violating this section shall be compelled by injunction, in a proceeding instituted in may be enjoined by the circuit court for the locality where of the jurisdiction wherein the facility is located or the proposed facility is to be located ; to cease the violation . 2. Such an action may be instituted by the Board, by the Attorney General, or by 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. 3. 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. 4. 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.~~

Drafting Note: No change in the law.

~~§ 10-292 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 should 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.

Drafting Note: No change in the law.

~~§ 10-293 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 as a part thereof 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 chapter 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.

Drafting Note: No change in the law.

~~§ 10-294 10.1-1438.~~ Powers of governing body of host community; technical assistance.—A. The governing body of a host community shall have the following powers power to :

1. ~~To hire~~ Hire and pay consultants and other experts on behalf of the host community in matters pertaining to the siting of the facility;

2. ~~To receive~~ Receive and disburse moneys from the fund, and any other moneys as may be available; and

3. ~~To enter~~ 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 ~~§ 10-298 of this Code 10.1-1442~~ .

~~B. Notwithstanding the provisions of the Virginia Freedom of Information Act (§ 2.1-340 et seq.), a governing body may:~~

1. ~~Hold executive sessions to discuss strategy with respect to the negotiation of a siting agreement or to consider the terms, conditions and provisions of a siting agreement if the governing body in open meeting finds that an open meeting will have a detrimental effect upon the negotiating position of the governing body and/or the establishment of the terms, conditions and provisions of the siting agreement. All negotiations with the applicant or its representatives may be conducted in a closed meeting or executive session.~~

2. ~~Hold confidential any documents, except as otherwise provided in subdivision 3 of subsection A of § 10-297 ; if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.~~

~~C. 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.

~~D. C.~~ The governing body of the host community may appoint a local advisory committee to facilitate communication and the exchange of information ~~between~~ among the local government, the community, the applicant and the Board.

~~E. D.~~ Notwithstanding the foregoing provisions of this ~~chapter article~~ , the governing body of a host community may notify the Board, within fifteen days after the briefing meeting pursuant to ~~§ 10-296 10.1-1439~~ , that it has elected to waive further participation under the provisions of this ~~chapter 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 ~~§ 10-298 of this chapter 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 ~~§ 10-302 10.1-1446~~ .

Drafting Note: Subsection B is being repealed and its language reinserted in § 2.1-342(b)(30) and § 2.1-344(a)(13). Subsections relettered.

~~§ 10-295 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 1 of subsection C of ~~§ 10-293 10.1-1437~~ and shall be included in the notice published pursuant to subdivision 2 of subsection C of ~~§ 10-293 of this Code 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 ~~primary purpose of the briefing meeting will be to~~ *shall* provide information on the proposed site and facility and ~~to receive 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.

Drafting Note: Code references changed.

§ ~~10-296~~ *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 § ~~10-303~~ *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 E of § ~~10-294~~ *10.1-1438* .

Drafting Note: Code references changed.

§ ~~10-297~~ *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 § ~~10-298~~ *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 ~~subdivision 6 of § 10-290 of this Code~~ *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 so advise the applicant and shall identify 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 so advise the applicant and 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 § ~~10-203~~ 10.1-1447 and shall notify each governing body that upon publication of the notice the governing body must 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 E of § ~~10-204~~ 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 § ~~10-200~~ of this Code 10.1-1423.

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 E of § ~~10-204~~ 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.

Drafting Note: Code references changed.

§ ~~10-208~~ 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. ~~In the event that a provision of a siting agreement conflicts with state or federal law, the state or federal law shall prevail.~~

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 .

Drafting Note: The language "In the event that a provision of a siting agreement conflicts with state or federal law, the state or federal law shall prevail" has been stricken as unnecessary and the language "or any other state or federal law" has been added to subsection E to ensure constitutionality.

§ ~~10-299~~ 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 § ~~10-297~~ of this chapter 10.1-1441 , the Board shall issue or deny a draft certification of site approval.

When application is made pursuant to subsection H of § ~~10-297~~ 10.1-1444 , 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 § ~~10-300~~ 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.

Drafting Note: Code references changed.

§ ~~10-300~~ 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 § ~~10-303~~ 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.

Drafting Note: Code reference changed.

~~§ 10-301~~ 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 ~~§ 10-303 of this chapter~~ 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 ; ~~if any,~~ of the facility. This requirement shall not apply when the host community has waived participation pursuant to subsection E of ~~§ 10-294~~ 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.

Drafting Note: Code references changed.

~~§ 10-302~~ 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 ~~preclude the right of any individual or~~ 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 § 25-232.1 of the Code of Virginia .

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 of ~~this chapter~~ and the terms of the siting agreement. The local governing body may be authorized by the Board to enforce specified provisions of the certification.

Drafting Note: The words "preclude the right of any individual or" in subsection E were

stricken as surplusage.

§ ~~10-303~~ 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.

Drafting Note: No change in the law.

§ ~~10-304~~ 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 § ~~10-204~~ 10.1-1438 of this Code .

Drafting Note: Code reference changed.

§ ~~10-304.1~~ 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 ~~subdivision 6 of § 10-200~~ 10.1-1434 , and other moneys appropriated thereto, gifts, grants, and the interest accruing thereon.

Drafting Note: Code reference changed.

Article 7.

Transportation of Hazardous Materials.

§ ~~10-305~~ 10.1-1450. Waste Management Board to promulgate rules and regulations.—The Board ; in cooperation with such other agencies of the Commonwealth which may be interested, shall promulgate rules and regulations designating the manner and method by which hazardous materials shall be loaded, unloaded, packed, identified, marked, placarded, stored and transported. Such rules and regulations shall be no more restrictive than any applicable federal laws or regulations.

Drafting Note: The words “rules and” are stricken because they are duplicative of “regulations” and regulations is the preferred term under the Administrative Process Act.

§ ~~10-306~~ 10.1-1451 . Enforcement of article ; rules and regulations.—The Department of State Police, together with all law-enforcement and peace officers of the Commonwealth, shall enforce the provisions of this article ; and any rule or regulation promulgated hereunder.

Drafting Note: The word “rules” is stricken because it is duplicative of “regulations” and regulations is the preferred term under the Administrative Process Act.

§ ~~10-307~~ 10.1-1452 . Article not to preclude exercise of certain regulatory powers.—The provisions of this article shall not be construed to 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.

Drafting Note: No change in the law.

§ ~~10-308~~ 10.1-1453. Exceptions.— ~~Nothing contained in this~~ This article shall not apply to regular military or naval forces of the United States, ~~nor to the~~ duly authorized militia of any state or territory thereof, ~~nor to the~~ police or fire departments of this Commonwealth, provided the same are acting within their official capacity and in the performance of their duties ; ~~nor~~ ,

or to the transportation of hazardous radioactive materials in accordance with § 44-146.30 of the Code of Virginia .

Drafting Note: No change in the law.

§ ~~10-309~~ 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.

Drafting Note: No change in the law.

Article 8.

Penalties, Enforcement and Judicial Review.

§ ~~10-310~~ 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 \$10,000 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.

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, 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 and shall be punished 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 and a fine of not more than \$10,000 for each day of violation, either or both.

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 § 9-6.14:4, of the Board or Director. Any such order shall be issued only after a hearing with at least thirty days' notice to the affected person of the time, place and purpose thereof. Such order shall become effective not less than fifteen 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 § ~~10-266~~ 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 \$10,000 for each violation. Each day of violation 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 for the purpose of abating to abate environmental pollution therein in such manner as the court may, by order, direct, except that where the owner in violation is ~~sueh~~ the county, city or town itself, or its agent, the court shall direct ~~sueh~~ the penalty to be paid into the state treasury.

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 limit specified in subsection E of this section. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under subsection E.

Drafting Note: Code reference changed.

~~§ 10-311~~ 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.

Drafting Note: No change in the law.

~~§ 10-312~~ 10.1-1457 . Judicial review.—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 (§ 9-6.14:1 et seq.).

Drafting Note: No change in the law.

CHAPTER 15.

SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE

WASTE MANAGEMENT COMPACT.

~~§ 32-1-238.6-1~~ 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 60 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.

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 sub-division 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 IVI. 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, section d. shall not become effective until the effective date of the import ban authorized by Article IV, section 1. 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 if 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. 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 notification 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. 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.

Drafting Note: This compact is currently in Title 32.1. The internal numbering has been changed, but no substantive changes have been made.

§ ~~32-1-238-7~~ 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.

Drafting Note: No change in the law.

~~§ 32.1-238.8~~ 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.

Drafting Note: No change in the law.

~~§ 32.1-238.9~~ 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.

Drafting Note: No change in the law.

~~§ 32.1-238.10~~ Chapter effective in due course, upon signature of Governor.—This chapter shall become effective in due course provided the Governor signs the compact heretofore referred to on behalf of the Commonwealth.

Drafting Note: This section is stricken because it is no longer necessary.

CHAPTER 16.

VIRGINIA RECREATIONAL FACILITIES AUTHORITY ACT.

Chapter Drafting Note : The provisions of this chapter were enacted by Chapter 360 of the 1986 Acts of Assembly. Since the legislation is recent, the few changes that appear within are primarily style or grammar changes.

~~§ 10-158.1~~ Short title.—This chapter may be cited as the "Virginia Recreational Facilities Authority Act."

Drafting Note : This section is being repealed because it is not necessary.

~~§ 10-158.2~~ 10.1-1600 . Definitions.— The following terms, whenever used or referred to in this chapter, shall have the following meanings, except in those instances where the context clearly indicates otherwise As used in this chapter, unless the context requires a different meaning :

"Authority" shall mean means the Virginia Recreational Facilities Authority ; a body politic and corporate to be organized and to have such powers as hereinafter provided .

"Board" shall mean means the board of directors of the Authority.

"Bonds" shall mean and include the means notes, bonds, certificates and other evidences of indebtedness or obligations of the Authority.

"Federal agency" shall mean and include means the United States of America, the President of the United States of America, and any department, corporation, agency, or instrumentality heretofore or hereafter created, designated, or established by the United States of America.

"Project" shall mean means the construction, improvement, furnishing, maintenance, acquisition or operation of any facility that will further the purposes of the Authority including but not limited to amphitheatre, auditorium, garden, park, zoo, steam train, museum, pavilion and parking, transportation, lodging and restaurant facilities and concessions in connection with any of the foregoing, including any and all buildings, structures and other facilities and appurtenances thereto which the Authority may deem necessary or desirable , together with all property, rights, easements and interests which may be acquired by the Authority.

Drafting Note: It is not necessary to list examples of facilities.

~~§ 10-158.3~~ 10.1-1601 . Declaration of public purpose; Authority created.— It is hereby found and determined by the General Assembly that there exists in the Commonwealth a need In order to (i) to provide a high quality recreational attraction in the western part of the Commonwealth for residents and tourists ; (ii) to expand the historical knowledge of adults and children in areas including but not limited to the important role the Commonwealth played in opening the American West in the early 19th century and animal and plant life in Virginia, North America and other areas ; (iii) to promote tourism and economic development in the Commonwealth; (iv) to set aside and conserve scenic and natural areas along the Roanoke River and to preserve open-space lands; and (v) to enhance and expand research and educational programs in areas such as veterinary care, horticulture, agriculture, botany, biology, and natural resource and land use planning and to encourage and coordinate such programs with institutions

of higher education in the Commonwealth.

In order to facilitate and coordinate the marketing, organization, utilization, and development of a recreational attraction and of educational programs in the Commonwealth which meet the purposes set out above and to promote tourism and economic development in the Commonwealth, and to conserve scenic and natural areas along the Roanoke River, which purposes are hereby declared and determined to be public purposes, there is hereby created and constituted 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 and held to be the performance of an essential governmental function.

Drafting Note: Unnecessary language and language stating legislative policy was removed.

~~§ 10-158.4 10.1-1602 . Board of Directors.~~—The Authority shall be governed by a board of directors consisting of nine members *appointed by the Governor* . ~~The Governor shall appoint the directors. Such appointments shall be made upon nomination of The River Foundation so long as such foundation, or its successor, shall make such nominations may recommend nominees to the Governor~~ . Three of the nine directors shall be appointed for terms of three years, three for terms of four years, and three for terms of five years, from the effective date of their appointment; and thereafter the members of the board *directors* shall be appointed for terms of five years. Vacancies in the membership of the board shall be filled ~~by appointment of the Governor for the unexpired portion of the term in like the same manner as original appointments are made for the unexpired portion of the term~~ . Members of the board shall be subject to removal from office in ~~likemanner~~ as are state, county, town, and district officers under the provisions of Article 1-1 (§ 24.1-79.1 et seq.), of Chapter 6 of Title 24.1 of the Code of Virginia. ~~The Circuit Court of the City of Richmond shall have exclusive jurisdiction of all proceedings for such removal. Immediately after such 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 ; and . The board may also elect such other subordinate officers who may or may not be members of the board, as it shall deem deems proper. The chairman, or in his absence, the vice-chairman, shall preside at all meetings of the board. In the absence of both the chairman and vice-chairman, the board shall appoint a chairman pro tempore, who shall preside at such meetings. Five 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 members of the board shall be entitled to reimbursement for their expenses incurred in attending the meetings of the board or while otherwise engaged in the discharge of their duties. Such expenses shall be paid out of the treasury of the Authority upon vouchers signed by the chairman of the board or by such other person or persons as may be designated by the board for this purpose. The board may employ an executive director of the Authority, who shall serve at the pleasure of the board, to direct the day-to-day activities of the Authority and carry out such of the powers and duties conferred upon him as may be delegated to him by the board . 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 Chapter 10 the Virginia Personnel Act (§ 2.1-110 et seq.) .~~

Drafting Note: It was provided that the River Foundation may make recommendations for board appointments. Language regarding removal from office was stricken because this is covered by § 24.1-79.1 et seq. Language regarding reimbursement for expenses was stricken because this is covered by § 14.1-5.2.

~~§ 10-158.5 10.1-1603 . Powers of Authority.~~—The Authority is hereby granted ~~and shall have and may exercise~~ all powers necessary or convenient for the carrying out of its statutory purposes, including ; ~~but without limiting the generality of the foregoing,~~ the following rights and powers:

1. ~~To sue and be sued, implead and be impleaded, complain and defend in all courts.~~
2. ~~To adopt, use, and alter at will a corporate seal.~~
3. ~~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, encumber, convey, sell or otherwise dispose of any property, real or personal, or any estate or interest therein including water rights in connection therewith, as may be necessary or desirable for carrying out the purposes of the Authority .~~
- 4 2 . ~~To make and enter into any contracts and agreements with any appropriate person or federal agency which are necessary or incidental to the performance of its duties and providing for or relating to any project or activity which is in the furtherance of its purposes . 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.

5 3 . To plan, develop, carry out, construct, improve, rehabilitate, repair, furnish, maintain, and operate projects.

6. To adopt, alter, and repeal bylaws, rules, and regulations governing the manner in which its business shall be transacted and the manner in which the powers of the Authority shall be exercised and its duties performed.

7 4 . To adopt such rules and promulgate regulations from time to time, not in conflict with the laws of this Commonwealth, concerning the use of properties under its control as will tend to the protection of protect such property and the public thereon.

8 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 ; at rates to be determined by it for the purpose of providing for the payment of . Such charges to pay the expenses of the Authority, the planning, development, construction, improvement, rehabilitation, repair, furnishing, maintenance, and operation of its projects and properties, the payment of the costs of accomplishing its purposes set forth in § 10-158-3 10.1-1601 , the payment of 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.

9 6 . To borrow money, make and issue bonds including bonds as that the Authority may ; from time to time, determine to issue for the purposes set forth in § 10-158-3 10.1-1601 or of refunding bonds previously issued by the Authority ; and . 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, real, personal or mixed, tangible or intangible, or any interest therein or to . The bonds may be secured by a pledge of any grant or contribution from a person or federal agency and . The Authority shall have the power to make such agreements with the purchasers or holders of such the bonds or with others in connection with any such the bonds, whether issued or to be issued, as the Authority shall deem it deems advisable, and in general to provide for the security for said the bonds and the rights of the bond holders thereof .

10 7 . To employ ; in its discretion, consultants, attorneys, architects, engineers, accountants, financial experts, investment bankers, superintendents, managers and such other employees and agents as may be necessary, and to fix their compensation to be payable from funds made available to the Authority.

11 8 . To receive and accept from any federal agency, foundation, or person, grants, loans, gifts or contributions of either money, property, or other things of value, to be held, used and applied only for the purposes for which such grants and contributions may be the grant or contribution is made or to be expended in accomplishing the objectives of the Authority.

12 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 such 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.

13 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.

14 11 . To do all acts and things necessary or convenient to carry out the powers granted to it by this chapter or any other acts.

Drafting Note: Several inherent powers were stricken.

§ 10-158-6 10.1-1604 . Form, terms, and execution of bonds and sale of bonds; use of proceeds; interim receipts or temporary bonds; lost or destroyed bonds; faith and credit of state

and political subdivisions not pledged; expenses.— A. The bonds of each issue shall be dated, shall bear interest at such rate or rates as shall be fixed by the Authority, shall mature at such a time or times not exceeding forty years from their date or dates, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such a price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of bonds and manner of execution of the bonds and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth.

B. The bonds shall be signed by the chairman or vice-chairman of the Authority, or if so authorized by the Authority, shall bear his facsimile signature, and the official seal of the Authority, or, if so authorized by the Authority, a facsimile signature thereof shall be impressed or imprinted thereon and attested by the secretary or any assistant secretary of the Authority, or, if so authorized by the Authority, with the facsimile signature of such secretary or assistant secretary. Any coupons attached to bonds issued by the Authority shall bear the signature or facsimile signature of the chairman or vice-chairman of the Authority or a facsimile thereof. In case if any officer whose signature or a facsimile of whose signature shall appear appears on any bonds or coupons shall cease to be such an officer before the delivery of such the bonds, such signatures the signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery and any. Any bonds may bear the facsimile signature of, or may be signed by, such persons as who are the proper officers to sign the bonds at the actual time of the execution of such bonds shall be the proper officers to sign such bonds although at the date of such the bonds such persons may not have been such officers.

Drafting Note : Existing § 10-158.6 is very lengthy. The main provisions are divided into separate sections.

§ 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 such the manner, either at public or private sale, and for such the price, as that it may determine 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 the happening of other conditions or things than those proceedings, conditions or things other than those which are specifically required by this chapter.

Drafting Note: This is a portion of existing § 10-158.6.

§ 10.1-1606. *Use of bond proceeds.*— The proceeds of the bonds of each issue shall be used solely for the purposes; and in furtherance of the powers, of the Authority as may be provided in the resolution authorizing the issuance of such the bonds or in the trust agreement hereinafter mentioned securing the same authorized in this chapter.

Drafting Note: This is a portion of existing § 10-158.6.

In addition to the above powers, the § 10.1-1607.— *Interim receipts or temporary bonds.*—The Authority shall have the authority is authorized to issue interim receipts or temporary bonds as provided in § 15.1-204 of the Code of Virginia and to execute and deliver new bonds in place of bonds mutilated, lost or destroyed, as provided in § 15.1-209 of the Code of Virginia.

Drafting Note: This is a portion of existing § 10-158.6.

§ 10.1-1608. *Faith and credit of Commonwealth or political subdivision not pledged.*— No obligation of the Authority shall be deemed to constitute a debt, or pledge of the faith and credit, of the Commonwealth or of any political subdivision, 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 same 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.

Drafting Note: This is a portion of existing § 10-158.6.

§ 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 shall have been are provided under the provisions of this chapter.

Drafting Note: This is a portion of existing § 10-158.6.

~~§ 10-158.7~~ 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 ~~by and~~ between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company ~~within or without the Commonwealth~~ . ~~Such~~ The trust agreement or the resolution providing for the issuance of ~~such~~ bonds may pledge or assign the revenues to be received and provide for the mortgage of any project or property or any part thereof. ~~Such~~ The trust agreement or resolution ~~providing for the issuance of such bonds~~ may contain ~~such~~ reasonable, proper and lawful 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~~ . 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 ~~or projects~~ in connection with which such bonds ~~shall~~ 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. ~~Any such~~ The trust agreement may set forth the rights of action by bondholders : ~~In addition to the foregoing, any such trust agreement or resolution may contain such and other provisions as the Authority may deem~~ ~~deems~~ reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the provisions of ~~such~~ the trust agreement or resolution may be treated as a part of the operation of the project ~~or projects~~ .

Drafting Note: No change in the law.

~~§ 10-158.8~~ 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 ~~shall be~~ ~~are~~ deposited shall act as a trustee of such moneys and shall hold and apply the ~~same~~ moneys for the purposes hereof, subject to such regulations as this chapter and ~~such~~ the resolution or trust agreement may provide.

Drafting Note: No change in the law.

~~§ 10-158.9~~ 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 ~~such~~ the trust agreement or the resolution authorizing the issuance of such bonds, may ~~either at law or in equity, by suit, action, mandamus or other proceeding,~~ protect and enforce ~~any and all~~ rights under the laws of the Commonwealth ~~or granted hereunder~~ or under ~~such~~ the trust agreement or resolution, and may enforce ~~and compel the performance of~~ all duties required by this chapter or by ~~such~~ 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.

Drafting Note: No change in the law.

~~§ 10-158.10~~ 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 ~~for which the deposit of bonds or obligations of the Commonwealth is now or may hereafter be authorized by law.~~

Drafting Note: No change in the law.

~~§ 10-158.11~~ 10.1-1614 . Revenue refunding bonds; bonds for refunding and for cost of additional projects.—The Authority is ~~hereby~~ authorized to provide for the issuance of revenue refunding bonds of the Authority for the purpose of refunding any bonds then outstanding which ~~shall~~ 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 project ~~or projects~~ in connection with which the bonds to be refunded ~~shall~~ 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 shall 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 projects or any portion or portions 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 in respect of the same shall be governed by the provisions of this chapter insofar as the same may be applicable .

Drafting Note: No change in the law.

~~§ 10-158.12~~ 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 or , loan or both or otherwise, to accomplish ; in whole or in part, any of the purposes of this chapter. All federal moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the United States and as are consistent with state law ; and all . All state moneys accepted under this section shall be accepted and expended by the Authority upon such terms and conditions as are prescribed by the Commonwealth.

Drafting Note: No change in the law.

~~§ 10-158.13~~ 10.1-1616 . Exemption from taxes or assessments.—The exercise of the powers granted by this chapter will be in all respects 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 ; and as . 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 ; and any . 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 at all times 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.

Drafting Note: No change in the law.

~~§ 10-158.14:~~ Reserved.

~~§ 10-158.15~~ 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 in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies are authorized to give such security for such deposits, if required by the Authority. The moneys in such the accounts shall be paid out on the warrant or other order of the treasurer of the Authority or of other any person or persons as the Authority may authorize 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.

Drafting Note: No change in the law.

~~§ 10-158.16~~ 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.

Drafting Note: No change in the law.

~~§ 10-158.17~~ 10.1-1619 . Violation of rules and regulations.—Violation of any rule or regulation adopted pursuant to subdivision 7 of § 10-158.5 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 rules and regulations shall be punishable as a Class 1 misdemeanor.

Drafting Note: No change in the law.

~~§ 10-158.18~~ 10.1-1620 . Appointment of special conservators of the peace.—The chairman of the Authority or any person designated by the Authority to carry out the purposes of this chapter 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 of this Code. Any such special conservator of the peace shall have, within the lands and facilities, controlled by the Authority, the powers, functions, duties, responsibilities, and authority of any other conservator of the peace .

Drafting Note : Unnecessary language stricken.

~~§ 10-158.19~~ 10.1-1621 . Conveyance or lease of park to Authority.—The Commonwealth of Virginia or any county, municipality, or other public body is hereby authorized and empowered 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.

Drafting Note: No change in the law.

~~§ 10-158.20~~ 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 thereof of the deed .

Drafting Note: No change in the law.

CHAPTER 17.

OPEN-SPACE LAND ACT.

~~§ 10-151.~~ Title of chapter.—This chapter shall be known and may be cited as the “Open-Space Land Act.”

Drafting Note: This section is being repealed because it is not necessary.

~~§ 10-156~~ 10.1-1700 . Definitions.— The following terms whenever used or referred to in this chapter shall have the following meanings As used in this article, unless the context requires a different meaning is clearly indicated by the context :

“Open-space land” means any land in an urban area 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, or (v) wetlands as defined in § 62.1-13.2.

(a) “Public body” means any state agency having present authority to acquire land for a public use, or any county or municipality, any park authority, public recreational facilities authority or the Virginia Recreational Facilities Authority.

(b) “Urban area” means any area which is urban or urbanizing in character, including semiurban areas and surrounding areas which form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, resort, and other activities.

(c) “Open-space land” means any land in an urban area which is provided or preserved for (1) park or recreational purposes, (2) conservation of land or other natural resources, (3) historic or scenic purposes, (4) assisting in the shaping of the character, direction, and timing of community development, or (5) wetlands as defined in § 62.1-13.2 of the Code of Virginia.

Drafting Note: Definitional section arranged in alphabetical order.

~~§ 10-152~~ 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 (a) (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 (b) (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 ; provided, ; however, this provision shall in no way not limit the power of eminent domain as it was possessed by any public body prior to the passage of this chapter.

Drafting Note: No change in the law.

~~§ 10-154~~ 10.1-1702 . Further powers of public bodies.— (a) A. A public body shall have all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the following powers in addition to others granted by this chapter :

(1) 1. To borrow funds and make expenditures necessary to carry out the purposes of this chapter ;

(2) 2. To advance or accept advances of public funds;

~~(3)~~ 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)~~ 4. To make and execute contracts and other instruments ~~necessary or convenient to the exercise of its powers under this chapter~~ ;

~~(5)~~ 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)~~ 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)~~ 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)~~ 8. To exercise ~~any or all of~~ 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 *State Commonwealth* , and to enter into agreements for joint or cooperative action.

~~(b)~~ B. For the purposes of this chapter, the *State Commonwealth* or a *county, city ; or town ; or county* may:

~~(1)~~ 1. Appropriate funds;

~~(2)~~ ~~Levy taxes and assessments;~~

~~(3)~~ 2. Issue and sell its general obligation bonds in the manner and within the limitations prescribed by the applicable laws of the *State Commonwealth* ; and

~~(4)~~ 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 *State Commonwealth* .

Drafting Note: Repetitive language stricken. Current subdivision (2) of subsection B is stricken because the Commonwealth and localities are granted the power to levy taxes elsewhere in the Code.

~~§ 10-158 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 ~~hereby expressly authorized ; without limiting the authority of the public body to acquire~~ (i) unrestricted fee simple title to tracts ; ~~to acquire, by gift or purchase, (1) ; (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 (2) (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 ~~such~~ 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.~~

Drafting Note: No change in the law.

~~§ 10-153 10.1-1704~~ . Diversion of property from open-space land use; conveyance or lease of open-space land.—~~(a)~~ A. No open-space land, the title to or interest of 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 the conversion or diversion is determined by the public body to be ~~(1)~~ (i) essential to the orderly development and growth of the urban area, and ~~(2)~~ (ii) in accordance with the official comprehensive plan for the urban area in effect at the time of conversion or diversion. Other real property of at least equal fair market value and of as nearly as feasible equivalent usefulness and location for use as permanent open-space land shall be substituted within a reasonable period not exceeding one year for any real property converted or diverted from

open-space land use, unless the public body ~~should determine~~ *determines* that such open-space land or its equivalent is no longer needed. The public body shall assure that the property substituted will be subject to the provisions of this chapter.

~~(b)~~ 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)~~ A of this section.

Drafting Note: No change in the law.

~~§ 10-157~~ 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.

Drafting Note: No change in the law.

CHAPTER 18.

VIRGINIA OUTDOORS FOUNDATION.

~~§ 10-159.~~ Declaration of policy.—It is hereby declared to be the public policy of Virginia that the preservation of open-space lands is in the public interest and is to be encouraged.

Drafting Note: This section is stricken because it states legislative policy and is incorporated in proposed § 10.1-1800 (existing § 10-161).

~~§ 10-160.~~ Foundation created.—In order to promote the public policy above declared, and to encourage private gifts of money, securities, land, or other property of whatever character for the purpose of preserving the natural, scenic, historic, scientific, and recreational areas of the State, there is hereby created the Virginia Outdoors Foundation, a body politic to be organized and to have such powers as hereinafter provided.

Drafting Note: This section is stricken because it states public policy. Some of its provisions are incorporated in the following section.

~~§ 10-161~~ 10.1-1800 . Administration Establishment and administration of Foundation; appointment, terms, oath 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, 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 the State Treasurer to serve ~~ex officio~~, and six trustees from the State Commonwealth at large to be appointed by the Governor : Initially the trustees-at-large shall be appointed for the following terms: two for a term of four years, two for a term of three years, and one for a term of two years. The sixth trustee-at-large shall be appointed initially for a term of two years. Thereafter, successors to trustees-at-large whose terms expire shall be appointed for terms of four years -year terms . Vacancies shall be filled for the unexpired term. No trustee-at-large shall be eligible to serve for more than two successive consecutive four-year terms ; but appointment to fill a vacancy shall not be considered as one of the two terms . All trustees-at-large shall take the oath of office as prescribed by law and post bond in the penalty of \$5,000 with the State Comptroller prior to entering upon the functions of office. No compensation shall be paid to any trustee for his service, but each trustee shall be reimbursed for travel and expenses incurred by him in the performance of his duties on behalf of the Foundation.

~~§ 10-162.~~ Chairman of board; quorum.— The Governor shall appoint a chairman of the board ; from among the six trustees-at-large. A majority of the members of the board serving at any one time shall constitute a quorum for the transaction of business.

Drafting Note: Some of the public policy from existing §§ 10-159 and 10-160 is restated in this section. Language regarding initial terms was stricken because that time period has expired. Section 49-1 requires an oath of office, so that requirement is stricken here. Reimbursement is covered by § 14.1-5.2, so that provision is stricken here. Existing § 10-162 is incorporated in this section. At the request of the Virginia Outdoors Foundation the word “scientific” in the first sentence has been changed to “open-space.”

~~§ 10-163~~ 10.1-1801 . General powers Powers of Foundation.— To enable it to carry out its functions, the The Virginia Outdoors Foundation shall have the following general powers:

~~(a)~~ 1. To have succession until dissolved by Act of 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 of Virginia ;

(b) 2. To sue and be sued in contractual matters in its own name;

(c) 3. To promulgate such rules and regulations ; not inconsistent with the laws of the State, as it deems necessary for the administration of its functions under Chapter 1-1:1 in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) ; Title 9, of the Code of Virginia, including among other matters, administration of funds, and the organization and procedure of the board of trustees ;

(d) 4. To accept, hold, and administer gifts and bequests of money, securities, or other property of whatsoever character , 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 from time to time 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 received by it from any source whatsoever , 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 for its purposes without further appropriation. The Foundation shall not engage in any business except in the furtherance of its objectives;

(e) 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;

(f) 6. To enter into contracts generally and to execute all instruments necessary or appropriate to carry out its purposes;

(g) 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

(h) 8. Generally to do any and all To perform any lawful acts necessary or appropriate to carry out the purposes for which of the Foundation is created .

Drafting Note: No change in the law.

§ ~~10-164~~ 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. The annual report shall be distributed in accordance with the provisions of § 2.1-467.

Drafting Note: No change in the law.

§ ~~10-165~~ 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 of Virginia , which shall be exempt from all state and local taxes, and shall be regarded as the property of the State Commonwealth for the purposes of all tax laws.

Drafting Note: No change in the law.

§ ~~10-166~~ 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.

Drafting Note: No change in the law.

CHAPTER 19.

VIRGINIA BEACH EROSION COUNCIL.

§ ~~62-1-153~~ 10.1-1900 . Commission continued as Council continued ; members, officers and agents; quorum.—The Virginia Beach Erosion Commission for the City of Virginia Beach is continued and shall hereafter be known as the Virginia Beach Erosion Council : The Council is continued and shall be composed of five members to be citizens of the City of Virginia Beach

appointed by the Governor : All the said members of the Council shall be citizens of the City of Virginia Beach. Members of the Council shall be appointed for a term of four years *four-year terms* . The Council shall be a body corporate invested with the rights, powers and authority and charged with the duties set forth in this chapter. The Council may elect one of its members as chairman and may appoint such officers and agents as it may require. A majority of the members of the Council shall constitute a quorum.

Drafting Note: No change in the law. This article was moved from Title 62.1.

§ ~~62.1-154~~ *10.1-1901* . Powers, functions and duties.—The Virginia Beach Erosion Council ~~hereby created~~ shall have all the powers necessary and convenient to carry out the purposes for which it is created, including the following ~~powers in addition to others herein granted~~ :

~~(a) To sue and be sued; to have a seal and to alter same at pleasure; to have perpetual succession;~~ *A. To acquire, purchase, sell, lease or otherwise dispose of real or personal property, provided that such action is necessary to and consistent with the purposes for which the Council is created; to make and execute instruments necessary and convenient to the exercise of the powers of the Council; and to make and from time to time adopt, amend and repeal bylaws, rules and regulations not inconsistent with law to carry out the general purposes of the Council.*

~~(b) The general purpose of the B. The Council hereby created is shall attempt to stop, impede or correct erosion along the Atlantic coast in the City of Virginia Beach, and to this end, the said Council shall have power to erect, construct and maintain jetties, groins, seawalls, to pump or otherwise place sand or any kind of material upon the beach for the purpose of correcting or controlling erosion; to acquire land, rights-of-way, sand, or any kind of material to attain or carry out the objects of the Council; to improve, beautify, maintain and preserve the ocean front in the City of Virginia Beach; and to provide for the construction, reconstruction, improvement, alteration, repair, or replacement of any jetty, groin, seawall, sand or other material.~~

~~(c) C. To contract with any person, firm or corporation for the performance of such act or acts necessary to carry out the purposes for which of the Council is created .~~

~~(d) The council of the city D. The Virginia Beach City Council may appropriate such funds to the said Council as it deems necessary to carry out the purposes for which this of the Council is created .~~

~~(e) E. The Council may accept and expend to carry out the purposes of this chapter any gift, grant or donation from any public or private source.~~

Drafting Note: No change in the law.

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10-305	10.1-1450
10-306	10.1-1451
10-307	10.1-1452
10-308	10.1-1453
10-309	10.1-1454
10-310	10.1-1455
10-311	10.1-1456
10-312	10.1-1457

COMPARATIVE TABLES

Cave Protection Act

OLD CODE SECTION

NEW TITLE 10.1

Chapter 24.1 of Title 9

Chapter 10

§ 9-152.1

§ 10.1-1001

9-152.2

10.1-1002

9-152.3

10.1-1001

9-152.4

10.1-1002

9-152.5

10.1-1002

10.1-1002

COMPARATIVE TABLES

OLD CODE SECTION

NEW TITLE 10.1

From Title 21

Chapters 5, 6 and 7

§ 21-1	Deleted
21-2	§ 10.1-506
21-3	10.1-500
21-4	10.1-549
21-5	10.1-550
21-5.1	Deleted
21-5.2	10.1-572
21-5.3	10.1-573
21-6	10.1-502
21-7	10.1-503
21-8	10.1-504
21-9	Deleted
21-10	10.1-505
21-11	Repealed
21-11.1	10.1-637
21-11.2	10.1-636
21-11.3	10.1-638
21-11.4	10.1-637
21-11.5	10.1-639
21-11.6	10.1-643
21-11.7	10.1-644
21-11.8	10.1-642
21-11.9	10.1-645
21-11.10	10.1-646
21-11.11	10.1-640
21-11.12	10.1-647
21-11.13	10.1-641
21-11.14	10.1-648
21-11.15	10.1-649
21-11.16	Deleted
21-11.16:1	10.1-704
21-11.17	10.1-700
21-11.18	10.1-701
21-11.19	10.1-702
21-11.20	10.1-703
21-11.21	Deleted
21-11.22	10.1-651
21-11.23	10.1-650
21-11.24	10.1-652
21-11.25	10.1-653
21-11.26	10.1-654
21-11.27	10.1-656
21-11.28	10.1-655
21-11.29	10.1-657
21-12	Repealed

COMPARATIVE TABLES

(continued)

OLD CODE SECTION

NEW TITLE 10.1

From Title 2

Chapters 5, 6 and 7

21-12.1	10.1-506
21-12.2	10.1-507
21-13	10.1-508
21-13.1	10.1-509
21-14	10.1-510
21-15	Deleted
21-16	10.1-511
21-17	10.1-512
21-18	10.1-513
21-19	Repealed
21-20	10.1-514
21-21	Repealed
21-22	Repealed
21-23	Deleted
21-24	Repealed
21-25	Repealed
21-26	Repealed
21-27	10.1-515
21-27.1	Deleted
21-27.2	10.1-516
21-28	10.1-517
21-29	10.1-518
21-30	10.1-519
21-31	Repealed
21-31.1	Repealed
21-31.2	10.1-520
21-31.3	10.1-521
21-32	10.1-522
21-33	10.1-523
21-34	10.1-523
21-35	10.1-523
21-36	10.1-523
21-37	10.1-524
21-38	10.1-525
21-39	10.1-526
21-40	10.1-527
21-41	10.1-528
21-42	10.1-529
21-43	10.1-529
21-44	10.1-530
21-45	10.1-530
21-46	10.1-531
21-47	10.1-532
21-48	10.1-533

COMPARATIVE TABLES

(continued)

OLD CODE SECTION

NEW TITLE 10.1

From Title 21

Chapters 5, 6 and 7

21-49	10.1-534
21-50	10.1-535
21-51	10.1-536
21-52	10.1-537
21-53	10.1-538
21-54	10.1-539
21-55	10.1-540
21-56	10.1-541
21-57	10.1-542
21-58	10.1-543
21-59	10.1-544
21-60	10.1-545
21-61	10.1-546
21-62	10.1-547
21-63	10.1-548
21-64	10.1-551
21-65	10.1-552
21-66 through 21-89	Deleted
21-89.1	Deleted
21-89.2	Deleted
21-89.3	10.1-560
21-89.4	10.1-561
21-89.5	10.1-562
21-89.6	10.1-563
	10.1-564
21-89.7	10.1-565
21-89.8	10.1-566
21-89.9	10.1-567
21-89.10	10.1-568
21-89.11	10.1-569
21-89.12	10.1-570
21-89.13	10.1-571
21-89.14	Deleted
21-89.15	Deleted
21-90 through 21-105	Deleted
21-106	10.1-553
21-107	10.1-554
21-108	10.1-555
21-109	10.1-556
21-110	10.1-557
21-111	10.1-558
21-112	10.1-559

COMPARATIVE TABLES

(continued)

OLD CODE SECTION

NEW TITLE 10.1

From Title 21

Chapters 5, 6 and 7

21-112.1	10.1-614
21-112.2	10.1-615
21-112.3	10.1-616
21-112.4	10.1-617
21-112.4:1	10.1-618
21-112.5	10.1-618
	10.1-619
21-112.6	10.1-620
21-112.7	10.1-621
21-112.8	10.1-622
21-112.9	10.1-623
21-112.10	10.1-624
21-112.11	10.1-625
21-112.12	Repealed
21-112.12:1	10.1-626
21-112.13	10.1-627
21-112.14	10.1-628
21-112.15	10.1-628
21-112.16	10.1-629
21-112.17	10.1-630
21-112.18	10.1-631
21-112.19	10.1-632
21-112.20	10.1-633
21-112.20:1	10.1-634
21-112.21	10.1-635

COMPARATIVE TABLES

Southeast Interstate Low-Level Radioactive Waste Management Compact

OLD CODE SECTION

§ 32.1-238.6
32.1-238.6:1
32.1-238.7
32.1-238.8
21.1-238.9
32.1-238.10

NEW TITLE 10.1

Repealed
§ 10.1-1500
10.1-1501
10.1-1502
10.1-1503
Deleted

COMPARATIVE TABLES

OLD CODE SECTION

NEW TITLE 10.1

From Title 62.1

§ 62.1-44.108	Deleted
62.1-44.109	10.1-603
62.1-44.110	10.1-600
62.1-44.111	10.1-601
62.1-44.112	10.1-602
62.1-115.1	10.1-604
62.1-115.2	10.1-605
62.1-115.3	10.1-606
62.1-115.4	10.1-607
62.1-115.5	10.1-608
62.1-115.6	10.1-609
62.1-115.7	10.1-610
62.1-115.8	10.1-611
62.1-115.9	10.1-612
62.1-115.10	10.1-613
62.1-153	10.1-1900
62.1-154	10.1-1901

Appendix III

Sections in titles other than Title 10 of the Code of Virginia which must be amended, added or repealed as a result of the recodification are listed below.

Amended

§ 2.1-1.1
2.1-1.3
2.1-1.6
2.1-51.9
2.1-342
2.1-344

Added

§ 2.1-548.8:1
2.1-548.8:2
2.1-548.8:3

Repealed

§ 9-152.1 through 9-152.5
21-1 through 21-112.21
27-5.2
27-5.4
27-54.1 through 27-54.5
32.1-238.6 through 32.1-238.10
45.1-1.8
56-426.1
62.1-44.108 through 62.1-44.12
62.1-115.1 through 62.1-115.10
62.1-153
62.1-154